

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202007011**

Release Date: 2/14/2020

Index Number: 2632.00-00, 2642.00-00,
9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-108998-19
Date:
October 02, 2019

In Re:

Legend

- Husband =
- Wife =
- Son 1 =
- Son 2 =
- Trust 1 =
- Trust 2 =
- GRAT 1 =
- GRAT 2 =
- GRAT 3 =
- GRAT 4 =
- Date 1 =
- Date 2 =
- Date 3 =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =
- Year 5 =
- Year 6 =
- Accountant 1 =
- Accountant 2 =

Dear _____ :

This letter responds to your personal representative's letter of April 18, 2019, 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 elect out of the generation-skipping transfer (GST) exemption automatic allocation rules with respect to certain transfers to trusts.

The facts and representations submitted are as follows:

On Date 1 of Year 1, Husband established Trust 1 for the benefit of Son 1. Trust 1 has GST Tax potential.

Also on Date 1 of Year 1, Husband established and funded an irrevocable grantor retained annuity trust (GRAT), GRAT 1. Under the terms of GRAT 1, Husband's retained interest terminated and any remaining principal passed to Trust 1 on Date 1 of Year 2. Thus, for GST tax purposes, the estate tax inclusion period (ETIP) with respect to GRAT 1 closed on Date 1 of Year 2.

On Date 2 of Year 2, Husband established Trust 2 for the benefit of Son 2. Trust 2 has GST Tax potential.

Also on Date 2 of Year 2, Husband established and funded a second GRAT, GRAT 2. Under the terms of GRAT 2, Husband's retained interest terminated and any remaining principal passed to Trust 2 on Date 2 of Year 3. Thus, for GST tax purposes, the ETIP with respect to GRAT 2 closed on Date 2 of Year 3.

On Date 3 of Year 3, Husband established and funded a third GRAT, GRAT 3. Under the terms of GRAT 3, Husband's retained interest terminated and any remaining principal passed in such amounts as the trustee determined to Trust 1 and Trust 2. Thus, for GST tax purposes, the ETIP with respect to GRAT 3 closed on Date 3 of Year 5.

On Date 3 of Year 4, Husband established and funded GRAT 4. Under the terms of GRAT 4, Husband's retained interest terminated and any remaining principal passed in such amounts as the trustee determined to Trust 1 and Trust 2. Thus, for GST tax purposes, the ETIP with respect to GRAT 4 closed on Date 3 of Year 6.

Husband and Wife (Taxpayers) each filed Form 709 (United States Gift (and Generation-Skipping Transfer) Tax Return) for Year 1 and Year 2, signifying their consent to treat the transfers occurring in Year 1 and Year 2 as having been made one-half by each spouse under § 2513 of the Code.

Taxpayers retained Accountant 1 to provide advice with respect to the tax consequences of the transfer to GRAT 1 and to file any necessary tax returns.

Accountant 1 failed to advise Taxpayers of the rules under § 2632(c) regarding the automatic allocation of GST exemption and the ability to elect out of the automatic allocation of GST exemption by making an election under § 2632(c)(5). As a result, Taxpayers did not elect out of the automatic allocation of GST exemption on their Forms 709 for the transfer to GRAT 1 in Year 1.

Taxpayers retained Accountant 2 to provide advice with respect to the tax consequences of the transfers to GRATs 2 through 4 and to file any necessary tax returns. Accountant 2 failed to advise Taxpayers of the rules under § 2632(c) regarding the automatic allocation of GST exemption and the ability to elect out of the automatic allocation of GST exemption by making an election under § 2632(c)(5). As a result, Taxpayers did not elect out of the automatic allocation of GST exemption on their Forms 709 for the transfer to GRAT 2. Additionally, Husband did not file Form 709 for Year 3 or Year 4, and did not elect to opt out of automatic allocation of GST exemption for the transfer to GRAT 3 in Year 3 and GRAT 4 in Year 4.

GST exemption was automatically allocated to the transfers made by Taxpayers to GRAT 1 and GRAT 2 at the expiration of the ETIP of each GRAT as a result of Taxpayers' failure to elect out of the GST exemption automatic allocation rules for the transfers to GRAT 1 and GRAT 2.

GST exemption was automatically allocated to the transfers made by Husband to GRAT 3 and GRAT 4 at the expiration of the ETIP of each GRAT as a result of Taxpayers' failure to elect out of the GST exemption automatic allocation rules for the transfers to GRAT 3 and GRAT 4.

The Taxpayers' personal representatives request the following rulings:

1. An extension of time under § 2642(g) and § 301.9100-3 to elect out of automatic allocation of GST exemption for the Year 1 transfer to GRAT 1.
2. An extension of time under § 2642(g) and § 301.9100-3 to elect out of automatic allocation of GST exemption for the Year 2 transfer to GRAT 2.
3. An extension of time under § 2642(g) and § 301.9100-3 to elect out of automatic allocation of GST exemption for the Year 3 transfer to GRAT 3.
4. An extension of time under § 2642(g) and § 301.9100-3 to elect out of automatic allocation of GST exemption for the Year 4 transfer to GRAT 4.

Law and Analysis

Section 2513(a)(1) provides that a gift made by one spouse to any person other than his spouse shall be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. Under § 2513(a)(2), paragraph (a)(1) only applies if both spouses have

signified their consent to the application of paragraph (a)(1) in the case of all such gifts made during the calendar year by either while married to the other.

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 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(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 is treated as 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.

Under § 2632(c)(3)(A), 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). Under § 2632(c)(3)(B), a GST trust is a trust that could have GST potential with respect to the transferor unless the trust satisfies any of the exceptions listed in § 2632(c)(3)(B)(i)-(vi).

Section 2632(c)(4) provides that for purposes of § 2632(c), an indirect skip to which § 2642(f) applies shall be deemed to have been made only at the close of the ETIP. The fair market value of such transfer shall be the fair market value of the trust property at the close of the ETIP.

Section 2632(c)(5)(A)(i) provides, in part, that an individual may elect to have § 2632(c) not apply to an indirect skip or any or all transfers made by such individual to a particular trust. Section 2632(c)(5)(B)(ii) provides that the election 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)(2)(i) of the Generation-Skipping Transfer Tax Regulations provides that, in the case of an indirect skip made after December 31, 2000, to which § 2642(f) (relating to transfers subject to the estate tax inclusion period or ETIP) 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). This 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.

Section 26.2632-1(b)(2)(ii) provides that, except as otherwise provided, the transferor may prevent the automatic allocation of GST exemption with regard to an indirect skip by making an election as provided in § 26.2632-1(b)(2)(iii).

Section 26.2632-1(b)(2)(iii)(A) provides, in relevant part, that a transferor may prevent (1) the automatic allocation of GST exemption (elect out) with respect to one or more (or all) current-year transfers made by the transferor to a specified trust or trusts, and (2) the automatic allocation of GST exemption (elect out) with respect to all future transfers made by the transferor to a specified trust or trusts.

Section 26.2632-1(b)(2)(iii)(B) provides that to elect out, the transferor must attach an election out statement to a Form 709 filed within the time period provided in § 26.2632-1(b)(2)(iii)(C). In general, the election out statement must identify the trust, and specifically must provide that the transferor is electing out of the automatic allocation of GST exemption with respect to the described transfer or transfers.

Under § 26.2632-1(b)(2)(iii)(C), to elect out, the Form 709 with the attached election out statement must be filed on or before the due date for timely filing the Form 709 for the calendar year in which (1) for a transfer subject to § 2642(f), the ETIP closes or (2) for all other elections out, the first transfer to be covered by the election out was made.

Section 26.2632-1(c)(1)(i) provides that a direct skip or an indirect skip that is subject to an ETIP is deemed to have been made only at the close of the ETIP. The transferor may prevent the automatic allocation of GST exemption to a direct skip or an indirect skip by electing out of the automatic allocation rules at any time prior to the due date of the Form 709 for the calendar year in which the close of the ETIP occurs (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).

Section 2642(b)(1)(A) 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 ETIP, its value at the time of the close of the ETIP.

Section 2642(f)(1) provides that, for purposes of determining the inclusion ratio, if an individual makes an inter vivos transfer of property, and the value of such property would be includible in the gross estate of such individual under chapter 11 if such individual died immediately after making such transfer (other than by reason of § 2035), any allocation of GST exemption to such property shall not be made before the close of the ETIP (and the value of such property shall be determined under § 2642(f)(2)). If

such transfer is a direct skip, such skip shall be treated as occurring as of the close of the ETIP.

Section 2642(f)(3) provides that, for purposes of § 2642(f), the term “estate tax inclusion period” means any period after the transfer described in § 2642(f)(1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under chapter 11 if he died.

Section 2642(g)(1)(A) provides, generally, 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).

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 generation-skipping transfer 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.

Sections 301.9100-1 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 301.9100-2 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, a taxpayer 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 representations made, we conclude that the requirements of § 301.9100-3 have been satisfied for Ruling No. 1, Ruling No. 2, Ruling No. 3 and Ruling No. 4. Accordingly, Taxpayers are granted an extension of time of 120 days from the date of this letter to elect out of the automatic allocation rules with respect to the Year 1 transfer to GRAT 1, the Year 2 transfer to GRAT 2, the Year 3 transfer to GRAT 3, and the Year 4 transfer to GRAT 4.

Each election should be made on an amended 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 Form 709's.

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.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers 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) of the Code provides that it may not be used or cited as precedent.

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

Sincerely,

Associate Chief Counsel
Passthroughs and Special Industries

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

Enclosures (2):
Copy for § 6110 purposes
Copy of this letter

cc: