

Internal Revenue Service

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In Re:

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:B04
PLR-101784-20

Date:
July 14, 2020

LEGEND

- Taxpayer =
- Spouse =
- Daughter =
- Son =
- Attorney =
- Accountant =
- Company =
- Daughter Trust =
- Son Trust =
- Trust 1 =
- Trust 2 =
- Trust 3 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =

Date 6 =
Date 7 =
Date 8 =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
w =
x =
y =
z =

Dear :

This letter responds to your authorized representative's letter dated December 20, 2019, and subsequent correspondence, 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 automatic allocation of generation-skipping transfer (GST) exemption with respect to certain transfers to trusts, pursuant to § 2632(c)(5)(A)(i)(II) of the Code.

The facts and representations submitted are summarized as follows:

On Date 1 of Year 1, a date after December 31, 2000, Taxpayer and Spouse established and funded two trusts: Daughter Trust, for the primary benefit of Daughter, and Son Trust, for the primary benefit of Son. On Date 2 of Year 4, Taxpayer transferred \$w in cash to each of Daughter Trust and Son Trust. Daughter Trust and Son Trust each have GST tax potential.

On Date 3 of Year 1, Taxpayer established an irrevocable grantor retained annuity trust (GRAT), Trust 1, and funded it with x shares in Company. Under the terms of Trust 1, Taxpayer's retained interest terminated and any remaining principal passed in equal shares to Daughter Trust and Son Trust on Date 3 of Year 3. Thus, for GST tax purposes, the estate tax inclusion period (ETIP) with respect to Trust 1 closed on Date 3 of Year 3.

On Date 4 of Year 1, Taxpayer established another irrevocable GRAT, Trust 2, and funded it with y shares in Company. Under the terms of Trust 2, Taxpayer's retained interest terminated and any remaining principal passed in equal shares to Daughter Trust and Son Trust on Date 4 of Year 3. Thus, for GST tax purposes, the estate tax inclusion period (ETIP) with respect to Trust 2 closed on Date 4 of Year 3.

On Date 5 of Year 2, Taxpayer established and funded a third irrevocable GRAT, Trust 3, and funded it with z shares in Company. Under the terms of Trust 3, Taxpayer's retained interest terminated and any remaining principal passed in equal shares to Daughter Trust and Son Trust on Date 5 of Year 4. Thus, for GST tax purposes, the estate tax inclusion period (ETIP) with respect to Trust 3 closed on Date 5 of Year 4.

Taxpayer retained Attorney and Accountant to provide tax advice with respect to the tax consequences of the transfers to the Daughter Trust, Son Trust, and Trusts 1 through 3, and retained Accountant to prepare any necessary tax returns. Both Attorney and Accountant failed to advise Taxpayer 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, while Taxpayer timely filed Forms 709 for Year 1, Year 2, and Year 4 to report the transfers, Taxpayer did not elect under § 2632(c)(5) to have the automatic allocation of GST exemption not apply to any or all transfers made by Taxpayer to Daughter Trust, Son Trust, Trust 1, Trust 2, and Trust 3. Nor did Taxpayer make any elections under § 2632(c)(5) to have the automatic allocation of GST exemption not apply prior to or including the year the ETIP closed for Trust 1, Trust 2, and Trust 3. Accordingly, GST exemption was automatically allocated to Taxpayer's Year 4 transfers to Daughter Trust and Son Trust and, at the close of the respective ETIPs, to the transfers to Trusts 1 through 3.

Taxpayer requests an extension of time under § 2642(g) and § 301.9100-3 to elect under § 2632(c)(5)(A)(i)(II) to have the automatic allocation of GST exemption not apply to any and all transfers to Daughter Trust, Son Trust, Trust 1, Trust 2, and Trust 3.

LAW & 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 GST 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.

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 shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero.

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

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)(II) provides that an individual may elect to have § 2632(c)(1) not apply to any or all transfers made by such individual to a particular trust. Such an election may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

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 under § 2632(c)(4). Under § 2632(c)(5)(B)(ii), 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 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) (regarding ETIPs) 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. In the case of an indirect skip to which § 2642(f) does apply, the indirect skip is deemed to be made at the close of the ETIP and the GST exemption is deemed to be allocated at that time.

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 part, that a transferor may prevent the automatic allocation of GST exemption (elect out) with respect to any transfer or transfers constituting an indirect skip made to a trust or to one or more separate shares that are treated as separate trusts under § 26.2654-1(a)(1). A transferor may elect out with respect to: (1) one or more prior-year transfers subject to § 2642(f) (regarding ETIPs) made by the transferor to a specified trust or trusts; (2) one or more (or all) current-year transfers made by the transferor to a specified trust or trusts; (3) one or more (or all) future transfers made by the transferor to a specified trust or trusts; and (4) all future transfers made by the transferor to all trusts (whether or not in existence at the time of the election out); or (5) any combination of (1) through (4) above.

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 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.

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.

Under § 301.9100-1(c), 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 six 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). 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.

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 the grant of relief will not prejudice the interests of the Government.

Under § 301.9100-3(b)(1)(v), 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 upon the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Accordingly, Taxpayer is granted an extension of time of 120 days from the date of this letter to make an election under § 2632(c)(5)(A)(i)(II) that the automatic allocation rules of § 2632(c)(1) do not apply to any or all transfers made by Taxpayer to Daughter Trust, Son Trust, and Trusts 1 through 3. The elections should be made on supplemental Forms 709 for Year 1 and Year 2. The supplemental Forms 709 should be filed with the Internal Revenue Service Center at the following address: Department of the Treasury, Internal Revenue Service, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. A copy of this letter should be attached to each Form 709.

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

Except as expressly provided herein, we neither express nor imply any opinion 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 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.

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,

Associate Chief Counsel
(Passthroughs and Special Industries)

Karlene M. Lesho

By: Karlene M. Lesho
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: