

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **202428004**  
Release Date: 7/12/2024

Third Party Communication: None  
Date of Communication: Not Applicable

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

Person To Contact: ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B04  
PLR-124061-23

Date:  
April 09, 2024

Legend

- Taxpayer =
- Spouse =
- Date 1 =
- Date 2 =
- Year 1 =
- Year 2 =
- Year 3 =
- Trust 1 =
  
- Trust 2 =
  
- Child 1 =
- Child 2 =
- Accountant =
- Accounting Firm =
- a =
- b =

Dear :

This letter responds to your authorized representative’s letter dated October 11, 2023, 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 generation-skipping transfer (GST) exemption automatic allocation rules under § 2632(c)(5) with respect to certain transfers to a trust.

The facts and representations submitted are summarized as follows:

On Date 1, Taxpayer and Taxpayer's spouse, Spouse, established and funded Trust 1, an irrevocable trust for the primary benefit of Child 1. Also on Date 1, Taxpayer and Spouse established and funded Trust 2, an irrevocable trust for the primary benefit of Child 2. Trust 1 and Trust 2 are identical, except for the identity of the beneficiaries.

Each trust provides that the trustee is to pay to or apply for the benefit of the primary beneficiary as much of the net income and principal as the trustee determines is appropriate, in trustee's absolute discretion. In addition, upon the primary beneficiary reaching the age of a, the trustee is to pay or apply for the benefit of the primary beneficiary, an annual unitrust amount equal to b percent of the net fair market value of the sum of the primary beneficiary's exempt and nonexempt trusts. Any net income not distributed is to be accumulated and added to principal. On the death of the primary beneficiary, any part of the trust that is not effectively appointed pursuant to powers of appointment granted in the instrument is to be divided into shares for the benefit of primary beneficiary's issue by right of representation. Each trust has GST potential.

During Year 1, Taxpayer transferred property to both Trust 1 and Trust 2. Taxpayer retained Accountant to prepare her Year 1 Form 709, United States Gift (and Generation-Skipping Transfer) Tax Returns. Accountant reported the transfers to Trust 1 and Trust 2 on Taxpayer's Form 709. However, Accountant failed to advise Taxpayer to elect out of the automatic GST allocation pursuant to § 2632(c)(5)(A)(i). Taxpayer timely filed Taxpayer's Form 709 (with extensions) before Date 2.

In Year 2, Taxpayer and Spouse engaged a new accounting firm, Accounting Firm, to prepare their income and gift tax returns for Year 2 and Year 3. While preparing Taxpayer's Year 3 income tax return, Accounting Firm discovered that the Year 1 Form 709 failed to elect out of the automatic GST allocation.

Taxpayer requests an extension of time under § 2642(g) and § 301.9100-3 to elect out of the automatic allocation of GST exemption under § 2632(c)(5)(A)(i) with respect to Taxpayer's Year 1 transfers to Trust 1 and Trust 2.

## LAW AND ANALYSIS

Section 2601 provides that a tax is imposed on every generation-skipping transfer (GST). Section 2611(a) provides that the term "generation-skipping transfer" means: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of GST tax 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. 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 GST with respect to the transferor unless an exception listed in § 2632(c)(3)(B)(i)-(vi) applies.

Section 2632(c)(5)(A)(i) provides, in relevant part, that an individual may elect to have the automatic allocation rules of § 2632(c)(1) not apply to -- (I) an indirect skip, or (II) any or all transfers made by such individual to a particular trust. Section 2632(c)(5)(B)(ii) provides, in relevant part, that the 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)(iii)(A) provides, in relevant 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).

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 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 301.9100-1(a).

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 Internal Revenue 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) 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 upon the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Taxpayer is granted an extension of time of 120 days from the date of this letter to elect out of the automatic allocation rules under § 2632(c)(5)(A)(i) for the transfers made during Year 1 to Trust 1 and Trust 2. The election should be made on an amended Form 709 for Year 1. The amended Form 709 should be filed with the Internal Revenue Service Center at the following address: Internal Revenue Service Center, Attn: E&G, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. You should attach a copy of this letter to the amended Form 709.

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 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) provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel  
Passthroughs and Special Industries

*Daniel J. Gespass*

By: \_\_\_\_\_  
[Daniel J. Gespass]  
Senior Technician Reviewer, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure:

Copy for § 6110 purposes

cc: