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Person To Contact: ID No.

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Date:
June 28, 2024

Legend

- Taxpayer =
- Spouse =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =
- Year 5 =
- Year 6 =
- Year 7 =
- Year 8 =
- Year 9 =
- Year 10 =
- Year 11 =
- Trust A =
- Trust B =

- Trust C1 =
- Trust C2 =
- Trust C3 =
- Trust D1 =
- Trust D2 =

Trust D3 =
Trust E1 =

Trust E2 =

Trust F1 =

Trust F2 =

Accountant 1 =
Accountant 2 =
Accountant 3 =
Law Firm 1 =
Law Firm 2 =
Law Firm 3 =

Dear :

This letter responds to your authorized representative's letter dated December 15, 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 trusts.

The facts and representations submitted are summarized as follows:

In Year 1, Taxpayer established and funded Trust A, a grantor retained annuity trust (GRAT). Taxpayer funded Trust A on Date 1, in Year 1. Trust 1 terminated in Year 4.

In Year 2, Taxpayer established Trust B, a GRAT. Taxpayer funded Trust B on Date 2, in Year 2. Trust 2 terminated in Year 3.

In Year 4, Taxpayer established Trust C1, Trust C2, and Trust C3. All three trusts were GRATs. Taxpayer funded the three trusts on Date 3, in Year 4. Trust C1, Trust C2, and Trust C3 terminated in Year 5.

In Year 6, Taxpayer established Trust D1, Trust D2, and Trust D3. All three trusts were GRATs. Taxpayer funded the three trusts on Date 4, in Year 6. Trust D1, Trust D2, and Trust D3 terminated in Year 7.

In Year 7, Taxpayer established Trust E1 and Trust E2. Both trusts were GRATs. Taxpayer funded both trusts on Date 5, in Year 7. Trust E1 and Trust E2 terminated in Year 9.

In Year 8, Taxpayer established Trust F1 and Trust F2. Both trusts were GRATs. Taxpayer funded both trusts on Date 6, in Year 8. Trust F1 and Trust F2 terminated in Year 10.

Upon termination, the remainder interest in each trust was paid to a trust for the benefit of Taxpayer's descendants. It is represented that Taxpayer did not intend to allocate GST exemption to any of the trusts.

Taxpayer retained several legal and tax professionals to advise him with respect to his estate and tax planning. Taxpayer retained Accountant 1 to prepare Taxpayer's Year 1 Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. Taxpayer timely filed Form 709 for Year 1. However, Accountant 1 failed to advise Taxpayer to elect out of the automatic allocation of GST exemption pursuant to § 2632(c)(5)(A)(i) on the return.

Taxpayer retained Accountant 2 to prepare Taxpayer's Year 2 Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. Taxpayer and Spouse elected to split gifts under § 2513 of the Internal Revenue Code for Year 2. Taxpayer and Spouse timely filed their respective Forms 709 for Year 2. However, Accountant 2 failed to advise Taxpayer or Spouse to elect out of the automatic allocation of GST exemption pursuant to § 2632(c)(5)(A)(i) on the returns.

Trust C1, Trust C2, and Trust C3 were drafted by attorneys of Law Firm 1. Law Firm 1 prepared a memorandum to Accountant 1 to prepare a gift tax return with respect to the trusts created in Year 4. The memorandum advised Accountant 1 of the need to elect out of the automatic allocation. Accountant 1 instructed Taxpayer's personal accountants of the need to file a gift tax return for Year 4, but Accountant 1 failed to mention the need to elect out of the automatic allocation of GST exemption. Form 709 was timely filed, but Taxpayer's advisers did not advise him to elect out of the automatic allocation of GST exemption.

In Year 6, Accountant 3 was hired to oversee Taxpayer's accounting, prepare Taxpayer's income tax returns, and assist Taxpayer's legal counsel and accounting advisors with his estate and tax planning. Trust D1, Trust D2, and Trust D3 were drafted by attorneys of Law Firm 1. Law Firm 1 never provided any instructions to Accountant 3 regarding the need to file a Form 709 in Year 6 or the ability to elect out of the automatic allocation of GST exemption. Taxpayer was never advised to file Form 709 or to elect out of the automatic allocation of GST exemption for Year 6.

In Year 7, Taxpayer hired a new law firm for estate planning, Law Firm 2. In Year 7, Law Firm 2 drafted Trust E1 and Trust E2. Law Firm 2 advised Accountant 3

that a gift tax return for Year 7 had to be filed but failed to mention the need to elect out of the automatic allocation of GST exemption. Accountant 3 terminated his employment with Taxpayer prior to the extended due date of the Year 7 Form 709. Taxpayer was never advised to file Form 709 or to elect out of the automatic allocation of GST exemption for Year 7.

In Year 8, Law Firm 2 drafted Trust F1 and Trust F2. Taxpayer was never advised to file Form 709 or to elect out of the automatic allocation of GST exemption for Year 8.

In Year 11, Taxpayer retained Law Firm 3. An attorney from Law Firm 3 reviewed all of Taxpayer's filings and documents related to all of the trusts formed in Year 1 through Year 8 and discovered that Taxpayer had not been properly advised to elect out of the automatic allocation of GST exemption for all of the trusts established in Year 1 through Year 8.

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 the transfers made to Trust A, Trust B, Trust C1, Trust C2, Trust C3, Trust D1, Trust D2, Trust D3, Trust E1, Trust E2, Trust F1, and Trust F2.

Taxpayer represents that no taxable distributions, taxable terminations, or any other events have occurred with respect to the trusts that would give rise to a GST tax liability.

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 2513(a)(1) provides, generally, that a gift made by one spouse to any person other than the donor's spouse is considered for purposes of the gift tax as made one-half by the donor and one-half by the donor's spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States.

Section 25.2513-1(b)(4) of the Gift Tax Regulations provides that the consent is effective only if both spouses signify their consent to treat all gifts made to third parties during that calendar period by both spouses while married to each other as having been made one-half by each spouse. Such consent, if signified with respect to any calendar

period, is effective with respect to all gifts made to third parties during such calendar period except, in part, if one spouse transferred property in part to his or her spouse and in part to third parties, the consent is effective with respect to the interest transferred to third parties only insofar as such interest is ascertainable at the time of the gift and severable from the interest transferred to his or her spouse.

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)(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 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 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 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(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.

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). 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.

Under § 301.9100-3(g)(1), the procedures set forth in § 301.9100-3 do not apply to requests for relief under § 2642(g)(1) that are filed on or after May 6, 2024, regardless of the date of the transfer. Since this ruling request was filed with the Internal Revenue Service prior to May 6, 2024, the procedures set forth in § 301.9100-3 may still be applied to grant relief under § 2642(g)(1). For requests for relief under § 2642(g)(1), see § 26.2642-7 of the Generation-Skipping Transfer Tax Regulations.

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 following transfers: Year 1 transfer to Trust A; Year 2 transfer to Trust B; and Year 4 transfers to Trust C1, Trust C2, and Trust C3. The elections should be made on amended Forms 709 for Year 1, Year 2, and Year 4. The amended Forms 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 Forms 709.

Taxpayer is also 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 following transfers: Year 6 transfers to Trust D1, Trust D2, and Trust D3; Year 7 transfers to Trust E1 and Trust E2; and Year 8 transfers to Trust F1 and Trust F2. The election should be made by filing Forms 709 for Year 6, Year 7, and Year 8. The Forms 709 should be filed with the Internal Revenue Service Center at the following address: Department of Treasury, Internal Revenue Service Center, Kansas City, MO 64999. You should attach a copy of this letter to the Forms 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.

