

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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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-103238-24

Date:  
August 14, 2024

Re:

Legend

Taxpayer =

Trust 1 =

Trust 2 =

Firm =

Year 1 =

Year 2 =

Year 3 =

Dear :

This letter responds to your authorized representative's letter dated February 6, 2024, 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 to have the GST exemption automatic allocation rules not apply with respect to transfers Taxpayer made in Year 1 to Trusts 1 and 2.

The facts and representations submitted are summarized as follows:

In Year 1, Taxpayer created and funded Trust 1 for the primary benefit of Daughter and Trust 2 for the primary benefit of Son. Trusts 1 and 2 have GST potential. Taxpayer did not intend for any portion of his GST exemption to be applied to the transfers he made in Year 1 to Trusts 1 and 2.

Taxpayer retained Firm to prepare Taxpayer's Year 1 Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. Firm timely filed Taxpayer's Year 1 Form 709, but failed to elect under § 2632(c)(5) to have the GST exemption automatic allocation rules not apply with respect to transfers Taxpayer made in Year 1 to Trusts 1 and 2.

In Year 2, Taxpayer died. In Year 3, Firm discovered the failure to make an election under § 2632(c)(5) on Taxpayer's Year 1 Form 709. The executor of Taxpayer's estate requests an extension of time under § 2642(g) and § 301.9100-3 to elect to have the GST exemption automatic allocation rules not apply with respect to transfers Taxpayer made in Year 1 to Trusts 1 and 2.

## LAW AND ANALYSIS

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer 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)(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)(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 2642(g)(1)(A) provides 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). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g).

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, 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 under this paragraph, 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 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). 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 GST Tax Regulations.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, the executor of Taxpayer's estate is granted an extension of time of 120 days from the date of this letter to elect to have the GST exemption automatic allocation rules not apply with respect to transfers Taxpayer made in Year 1 to Trusts 1 and 2.

The allocation should be made on an amended Year 1 Form 709. The Form 709 should be filed with the Internal Revenue Service at the following address: Internal Revenue Service Center, ATTN: E&G, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915.

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.

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

Sincerely,

Associate Chief Counsel  
Passthroughs & Special Industries

By: \_\_\_\_\_  
Daniel J. Gespass  
Senior Technician Reviewer  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes.

cc: