

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202450001**
Release Date: 12/13/2024

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 2632.00-00, 2642.00-00,
2642.06-00, 9100.00-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-104140-24

Date:
August 30, 2024

Legend

Taxpayer =
Spouse =
Trust =
Attorney =
Accountant =
Date 1 =
Year 1 =

Dear :

This letter responds to your authorized representative's letter dated February 26, 2024, 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 transfers to Trust, pursuant to § 2632(c)(5)(A)(i)(II) of the Code.

The facts and representations submitted are summarized as follows:

On Date 1 in Year 1, a date after December 31, 2000, Spouse (Taxpayer's spouse) established and funded Trust for the benefit of certain family members, including the children of Taxpayer and Spouse. Upon the deaths of Taxpayer and Spouse, any remaining Trust property will be held in further trust. Trust has GST tax potential.

Taxpayer and Spouse retained Attorney and Accountant to provide tax advice with respect to the tax consequences of the transfers to Trust and retained Accountant to prepare any necessary tax returns. Taxpayer and Spouse did not intend for any portion of GST exemption to be applied to any or all transfers to Trust. Attorney and Accountant, however, failed to advise Taxpayer and Spouse 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 § 2632(c)(5)(A). As a result, Taxpayer did not file Form 709 for Year 1 to elect under § 2632(c)(5)(A)(i)(II) to opt out of the automatic allocation of GST exemption to any or all transfers made by Taxpayer to Trust.

While Taxpayer and Spouse have not filed Forms 709 for Year 1, they represent that they will file Year 1 Forms 709 and consent to treat all gifts in Year 1 as having been made one-half by each of them under § 2513. It has been further represented that, to date, no taxable distributions, taxable terminations, or any other events have occurred with respect to Trust that would give rise to a GST tax liability.

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 all transfers made by Taxpayer to Trust. Spouse has made a similar request.

LAW & ANALYSIS

Section 2513 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.

Section 2513(a)(2) provides that § 2513(a)(1) shall apply only if both spouses have signified (under the regulations provided for in § 2513(b)) their consent to the application of § 2513(a)(1) in the case of all such gift made during the calendar year by either while married to the other.

Section 2513(b)(2) generally provides that consent may be so signified at any time after the close of the calendar year in which the gift was made, subject to the following limitation— (a) the consent may not be signified after the 15th day of April following the close of such year, unless before such 15th day no return has been filed for such year by either spouse, and (b) the consent may not be signified after a notice of deficiency with respect to tax for such year has been sent to either spouse.

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 is the taxable amount multiplied by the applicable rate. Section 2641(a) defines 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 their 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(a)(1) provides that any allocation by an individual of GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

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.

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.

Section 2632(c)(3)(B) provides, in part, that the term "GST trust" means a trust that could have a generation-skipping transfer with respect to the transferor unless an exception enumerated in § 2632(c)(3)(B)(i)-(vi) applies.

Section 2632(c)(5)(A)(i) provides that an individual may elect to have § 2632(c) not apply to: (1) an indirect skip or (2) any and all transfers made by such individual to a particular trust.

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 pursuant to § 2632(c)(4) or on such later date or dates as may be prescribed by the Secretary.

Section 2632(c)(5)(B)(ii) provides that 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) (relating to transfers subject to an 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 (including indirect skips to which § 2642(f) may apply) 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; (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.

Section 2642(b)(1)(A) provides that, except as provided in § 2642(f), if the allocation of 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(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 § 2642(g), 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 § 2642(g), 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.

Based upon the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Accordingly, assuming Taxpayer and Spouse signify their consent to treat all of the gifts occurring in Year 1 as having been made one-half by each of them under § 2513, 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) for the automatic allocation rules of § 2632(c)(1) not to apply to all transfers made by Taxpayer to Trust. The election should be made on a Year 1 Form 709. The Form 709 should be filed with the Internal Revenue Service Center at the following address: Department of the Treasury, Internal Revenue Service, Kansas City, MO 64999. A copy of this letter should be attached to Form 709.

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 & Special Industries

By: Melissa Liquerman
Melissa Liquerman
Senior Counsel
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure (1)

Copy for § 6110 purposes.

cc: