

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202451010**

Release Date: 12/20/2024

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

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:04
PLR-106085-24

Date:
September 25, 2024

RE:

LEGEND

- Taxpayer =
- Spouse =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Date 7 =
- Date 8 =
- Date 9 =
- Date 10 =
- Date 11 =
- Date 12 =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =
- Year 5 =
- Year 6 =
- Year 7 =
- Children's Trust =

- Trust 1 =
- Trust 2 =
- Trust 3 =
- Trust 4 =
- Trust 5 =
- Trust 6 =

Trust 7 =
Trust 8 =
Trust 9 =
Trust 10 =
Trust 11 =
Firm =
Attorney =

Dear :

This letter responds to your personal representative's letter of March 28, 2024, and subsequent correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code (Code) and § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to elect out under § 2632(c)(5) of the generation-skipping transfer (GST) exemption automatic allocation rules with respect to certain transfers to trusts.

The facts and representations submitted are as follows:

On Date 1, Spouse established Children's Trust, an irrevocable trust, for the primary benefit of Taxpayer's and Spouse's children (Children). Children's Trust has GST tax potential.

During Years 1 through 5, Spouse established and funded eleven irrevocable grantor retained annuity trusts (GRATs), Trusts 1 through 11. Under the terms of Trusts 1 through 11, Spouse retained an annuity for a term of years. At the expiration of the term of the annuity period of each of Trusts 1 through 11, the trust property remaining in each respective trust was to be distributed to Children's Trust as the remainder beneficiary.

Spouse survived the expiration of the annuity terms of Trusts 1 through 11 and the estate tax inclusion period (ETIP) with respect to Taxpayer's transfers funding Trusts 1 through 11 closed for GST purposes. In Year 3, the ETIP with respect to Taxpayer's transfers funding Trusts 1 through 3 closed on Dates 2 through 4, respectively. In Year 4, the ETIP with respect to Taxpayer's transfers funding Trusts 4 and 5 closed on Dates 5 and 6, respectively. In Year 5, the ETIP with respect to Taxpayer's transfers funding Trusts 6 and 7 closed on Dates 7 and 8, respectively. In Year 6, the ETIP with respect to Taxpayer's transfer funding Trust 8 closed on Date 9. In Year 7, the ETIP with respect to Taxpayer's transfers funding Trusts 9 through 11 closed on Dates 10 through 12, respectively.

Attorney provided Taxpayer and Spouse with legal and tax advice in connection with the creation and establishment of Trusts 1 through 11. Attorney advised Taxpayer and Spouse of the automatic allocation rules under § 2632(c) and the ability to elect out of

the automatic allocation of GST exemption under § 2632(c)(5)(A)(i). Attorney further advised Taxpayer and Spouse of the ability to consent to treat the transfers of each spouse as having been made one-half by each spouse under § 2513. Pursuant to this discussion, Taxpayer and Spouse decided that they wanted to consent to treat the transfers of each spouse as having been made one-half by each spouse under § 2513 and wanted to elect out of the automatic allocation of GST exemption with respect to the transfers to Trusts 1 through 11.

Taxpayer and Spouse retained Firm to prepare and file Taxpayer's and Spouse's Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, for Years 1 through 5, and relied on Firm to elect out of the automatic allocation of GST exemption to the transfers to Trusts 1 through 11. However, in preparing Taxpayer's and Spouse's Forms 709 for Years 1 through 5, Firm inadvertently failed to elect out of the automatic allocation of GST exemption to the transfers to Trusts 1 through 11 as further reported on Taxpayer's Form 709 returns. Taxpayer and Spouse each elected to treat gifts made by each as made by both under § 2513 and each reported one-half of the transfers as gifts on Forms 709 for Years 1 through 5.

It has been represented that, to date, no taxable distributions, nor taxable terminations, or any other events have occurred with respect to Trusts 1 through 11 or Children's 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 out under § 2632(c)(5)(A)(i)(I) of the automatic allocation of Taxpayer's GST exemption to the transfers to Trusts 1 through 11 at the close of the ETIP.

LAW AND ANALYSIS

Section 2601 imposes a tax on every generation skipping transfer (GST) made by a "transfer" to a "skip person." 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(a)(1) provides that any allocation by an individual of his or her 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 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 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), provides, in part, that the term “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)(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 estate tax inclusion period (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) provides, in part, that an individual may elect to have the automatic allocation rules of § 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)(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 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)(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 estate tax inclusion period or 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). The 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; (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). Further, § 26.2632-1(b)(2)(iii)(A) provides that in the case of a transfer treated under § 2513 as made one-half by the transferor and one-half by the transferor's spouse, each spouse shall be treated as a separate transferor who must satisfy separately the requirements of § 26.2632-1(b)(2)(iii)(B) to elect out with respect to the transfer.

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 estate tax inclusion period, 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 the transferor died. The estate tax inclusion period shall in no event extend beyond the earlier of (A) the date on which there is a GST with respect to the property, or (B) the date of the death of the transferor.

Section 2513(a)(1) provides that a gift made by one spouse to any person other than his spouse shall be considered as made one-half by taxpayer and one-half by taxpayer’s 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 gifts made by either while married to the other.

Section 2652(a)(1) provides, in part, that except as provided in § 2652(a) or § 2653(a), the term “transferor” means, in the case of any property subject to the tax imposed by chapter 12, the donor.

Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of chapter 13. Under § 26.2652-1(a)(4), in the case of a transfer with respect to which the donor’s spouse makes an election under § 2513 to treat the gift as made one-half by the spouse, the electing spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513. The donor is treated as the transferor of one-half of the value of the entire property.

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.

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). 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 on 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 file amended Forms 709 for Years 1 through 5 to make an election under § 2632(c)(5)(A)(i)(I) that the automatic allocation rules not apply to the transfers to Trusts 1 through 11 at the close of the ETIP. The amended Form 709 returns for Years 1 through Year 5 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. A copy of this letter should be attached to each Form 709.

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.

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.

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, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

Karlene M. Lesho

By: _____
Karlene M. Lesho
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:
Copy for § 6110 purposes

cc: