

## Internal Revenue Service

Number: **201527001**

Release Date: 7/2/2015

Index Number: 2642.00-00, 9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:04

PLR-101784-15

Date:

March 23, 2015

### Legend

Husband	=
Wife	=
Child 1	=
Child 2	=
Child 3	=
Accountant 1	=
Accountant 2	=
Financial Advisor	=
Attorney	=
Trust 1	=
Trust 2	=
Trust 3	=
Trust 4	=
Trust 5	=
Partnership 1	=
Partnership 2	=
Partnership 3	=
Date 1	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	=
Year 7	=
Year 8	=
Year 9	=
Year 10	=
State	=

Dear \_\_\_\_\_ :

This letter responds to your authorized representative's letter dated December 23, 2014, and subsequent correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Husband and Wife's generation-skipping transfer (GST) tax exemptions to certain transfers to trusts and rulings that the automatic allocation rules of § 2632(c) and (e) apply to certain transfers to trusts.

### FACTS

The facts and representations submitted are summarized as follows:

Husband and Wife live in a community property state, State. On Date 1, in Year 1, a date prior to December 31, 2000, Husband and Wife executed three irrevocable trusts, Trust 1, Trust 2, and Trust 3 (Children's Trusts) for the lifetime benefit of Child 1, Child 2, and Child 3, respectively. Each trust provides that during the grantor's life, the trustee shall distribute to the child so much of the income or principal of the trust as the trustee deems reasonably required for his or her maintenance and support in health and reasonable comfort. If a child predeceases one of the grantors, the remaining assets in his or her trust are held for the benefit of that child's descendants. If the child beneficiary survives the last to die of Husband and Wife, then in addition to a continued right to receive the discretionary distributions of income and principal during his lifetime, the child shall have a testamentary limited power of appointment over the trust assets. If the child fails to exercise his power of appointment, the trust assets shall pass to the child's then living issue and, if none, to grantor's then living issue. On Date 1, Husband and Wife also formed three partnerships, Partnership 1, Partnership 2, and Partnership 3.

In Year 1, Husband and Wife transferred units in Partnership 1 and Partnership 2 to Trust 1 and Trust 2 and units in Partnership 2 and Partnership 3 to Trust 3. Husband and Wife each reported his or her respective portion of the Year 1 transfers on timely filed Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return. Husband and Wife retained Accountant 1 to prepare their Year 1 Forms 709. Husband and Wife intended to allocate their GST exemption to the Year 1 transfers. However, Accountant 1 failed to allocate Husband's and Wife's GST exemption to the Year 1 transfers.

In Year 2, Husband died. Husband's Will created and funded Trust 4. Trust 4 provides that if Wife survives Husband, the trustee shall distribute to Wife for her life so much of the income and principal of the trust as the trustee deems reasonably required for her maintenance and support, in health and reasonable comfort. Upon Wife's death, the trustee is to distribute the remaining principal and accumulated income to the

Children's Trusts as specified in Trust 4. Wife, as the executor of Husband's estate, timely filed a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. Wife retained Accountant 2 to prepare Husband's Form 706. Husband intended to allocate his GST exemption to the transfer to Trust 4. However, Accountant 2 failed to allocate Husband's GST exemption to the transfer to Trust 4.

In Year 2, a year prior to December 31, 2000, Wife created and funded Trust 5, an irrevocable trust. Trust 5 provides that the trustee shall divide the principal of Trust 5 and any accumulated income or additions to Trust 5 into three (3) equal funds -- one fund to benefit each of Child 1, Child 2 and Child 3. During Wife's lifetime, the fund established for a child is to be held for the benefit of that child and his or her children. Upon Wife's death each fund in Trust 5 is to be distributed to the appropriate Children's Trust. Wife did not file a Form 709 to report the Year 2 transfer to Trust 5 and, accordingly, she did not allocate her GST exemption to this transfer.

In Year 3, a year prior to December 31, 2000, Wife transferred units in Partnership 1 to Trust 1. Wife did not file a timely Form 709 to report the Year 3 transfer to Trust and, accordingly, she did not allocate her GST exemption to this transfer. In Year 10, Wife filed a Form 709 to report the Year 3 transfer to Trust 1. However, she did not make a late allocation of her GST exemption to this transfer.

In Years 4 through 7, years prior to December 31, 2000, Wife made cash gifts to Trust 5. Wife did not file a Form 709 to report the Years 4, 5, 6, or 7 transfers to Trust 5 and, accordingly, she did not allocate her GST exemption to these transfers.

In Year 8, a year after December 31, 2000, Wife made an additional cash gift to Trust 5. Wife did not file a Form 709 to report this transfer to Trust 5 and, accordingly, she did not allocate her GST exemption to this transfer.

In Year 9, a year after December 31, 2000, Wife transferred units in Partnership 3 to Trust 3. Wife timely filed a Form 709 to report this transfer to Trust 3. However, she did not allocate her GST exemption to this transfer.

Wife relied upon Financial Advisor, Attorney, and Accountant 2 to advise her regarding the filing of Forms 709 for Years 2 through 8 for the transfers to Trust 1 and Trust 5. Financial Advisor and Attorney relied upon Accountant 2 to prepare Wife's Forms 709 for Years 2 through 8 and to properly allocate Wife's GST exemption to these transfers. Wife intended to allocate her GST exemption to these transfers. However, Accountant 2 failed to prepare the Forms 709 for Wife for these years.

It is represented that Husband and Wife have sufficient GST exemption to allocate to the Year 1 through Year 9 transfers.

RULINGS REQUESTED

1. Wife requests an extension of time to allocate her GST exemption to the Year 1 transfers to the Children's Trusts, to the Year 3 transfer to Trust 1, and to the Year 2 and Years 4 through 7 transfers to Trust 5. These allocations are effective on the date of the transfers and are based on the value of the transferred property as finally determined for purposes of chapter 12.
2. Wife, as executor of Husband's estate, requests an extension of time to allocate Husband's GST exemption to the Year 1 transfers to the Children's Trusts. These allocations are effective on the date of the transfers and are based on the value of the transferred property as finally determined for purposes of chapter 12.
3. Husband's GST exemption was automatically allocated under § 2632(e) to the Year 2 transfer to Trust 4.
4. Wife's GST exemption was automatically allocated under § 2632(c) to the Year 8 transfer to Trust 5 and the Year 9 transfer to Trust 3.

#### LAW AND ANALYSIS

Section 2601 imposes a tax on every generation-skipping transfer (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 the 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.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess (if any) of 1 over the "applicable fraction." The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of the GST exemption allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust or involved in the direct skip, reduced by the sum of any federal estate tax or state death tax actually recovered from the trust attributable to such property and any charitable deduction allowed under § 2055 or 2522 with respect to such property.

Section 2631(a), as in effect for the tax years at issue, provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) 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) 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's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides, in part, that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2632(c) is effective for transfers subject to chapter 11 or 12 made after December 31, 2000, and in this case, Years 8 and 9. 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 for purposes of § 2632(c), 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 that the term "GST trust" means a trust that could have a generation-skipping transfer with respect to the transferor unless the trust is described in § 2632(c)(3)(B)(i) through (vi).

Section 2632(e) provides that any portion of an individual's GST exemption which has not been allocated within the time prescribed by § 2632(a) shall be deemed to be allocated first, to property which is the subject of a direct skip occurring at such individual's death, and second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

Section 26.2632-1(e)(2) provides, in relevant part, that a decedent's unused GST exemption is automatically allocated on the due date for filing Form 706 or Form 706 NA to the extent not otherwise allocated by the decedent's executor on or before that date. The automatic allocation occurs whether or not a return is actually required to be filed. Unused GST exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)), on the basis of the value of the property as finally determined for purposes of chapter 11 (chapter 11 value), first to direct skips treated as occurring at the transferor's death. The balance, if any, of unused GST exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)) on the basis of the chapter 11 value of the nonexempt portion of the trust property (or in the case of trusts that are not included in the gross estate, on the basis of the date of death value of the trust) to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made.

Section 2642(b) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of § 2632(a) shall be its value as finally determined for purposes of chapter 12, and such allocation shall be effective on and after the date of such transfer and if property is transferred as a result of the death of the transferor, the value of such property for purposes of § 2632(a) shall be its value as finally determined for purposes of chapter 11 and such allocation shall be effective on and after the due date of the death of the transferor.

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). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A).

Section 2642(g)(1)(B) provides that in determining whether to grant relief, 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 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 is 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) under the provisions of § 301.9100-3.

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) under the provisions of § 301.9100-3.

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.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Wife is granted an extension of time of 120 days from the date of this letter to allocate Wife's GST exemption to the Year 1 transfers to Children's Trusts, to the Year 3 transfer to Trust 1, and to the Year 2 and Years 4 through 7 transfers to Trust 5. Wife, as executor of Husband's estate, is granted an extension of time to allocate Husband's GST exemption to the Year 1 transfers to Children's Trusts. These allocations are effective on the date of the transfer and are based on the value of the transferred property as finally determined for purposes of chapter 12.

Based on the facts submitted and the representations made, we rule that Husband's GST exemption was automatically allocated to the transfer to Trust 4 on the due date for filing Form 706 for Husband's estate. Further, we rule that Wife's GST exemption was automatically allocated to the Year 8 transfer to Trust 5 and the Year 9 transfer to Trust 3 on the date of the transfers.

Wife allocations of GST exemption should be made on supplemental Forms 709 for Year 1 and Year 3, and on original Forms 709 filed for Year 2 and Years 4 through 7. Husband's allocations of GST exemption should be made on a supplemental Form 709 for Year 1. The supplemental and original returns should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each supplemental and original return. A copy of this letter is enclosed for this purpose.

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 representative.

The ruling contained in this letter is based upon information and representations submitted by the Taxpayers 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 ruling, it is subject to verification on examination.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

---

Lorraine E. Gardner,  
Senior Counsel, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy for section 6110 purposes

Copy of this letter