

Internal Revenue Service

Number: **202309006**

Release Date: 3/3/2023

Index Number: 2632.00-00, 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:B4

PLR-111603-22

Date:

December 05, 2022

Legend

Taxpayer	=
Spouse	=
Date	=
Trust A	=
Trust B	=
Trust C	=
Trust D	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
<u>X</u>	=
<u>Y</u>	=
<u>Z</u>	=
Law Firm 1	=
Law Firm 2	=
Accounting Firm	=

Dear :

This letter responds to the submission dated May 13, 2022, from your authorized representative, 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 of the generation-skipping transfer (GST) tax exemption automatic allocation rules.

Facts

You represent the facts to be as follows:

On Date, Taxpayer and Spouse created four separate irrevocable trusts, one for the primary benefit of each stepchild of Taxpayer. The trusts are Trust A, Trust B, Trust C, and Trust D and are known collectively as the Year 1 Trusts. The Year 1 Trusts are identical except for the identity of the primary beneficiaries. The Year 1 Trusts have GST tax potential.

In Year 1, on a date after December 31, 2000, Taxpayer transferred, in the aggregate, \$X to the Year 1 Trusts. Taxpayer elected to treat the Year 1 gifts as made one-half by Spouse as permitted under § 2513 of the Code, and Spouse consented. In Years 2 and 3, on dates after December 31, 2000, Taxpayer transferred, in the aggregate, \$Y and \$Z, respectively, to the Year 1 Trusts.

In Year 1, Taxpayer engaged Law Firm to draft the trust agreements for the Year 1 Trusts. In Years 1 through 3, Taxpayer engaged Accounting Firm to prepare a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. In Year 1, Law Firm 1 instructed Accounting Firm that Taxpayer did not intend that any GST tax exemption amount be allocated to transfers made to the Year 1 Trusts. In each of Years 1 through 3, Accounting Firm prepared a Form 709 to report transfers made by Taxpayer. On these Forms 709, Accounting Firm reported the transfers to the Year 1 Trusts, but Accounting Firm inadvertently failed to include an election out statement to avoid the allocation of GST exemption to the Year 1 Trusts. In Year 4, Law Firm 2 discovered the failure to include the election out statement on the Forms 709 filed for Years 1 through 3.

Taxpayer seeks a ruling granting an extension of time to elect out of the automatic allocation rules with respect to the transfers to the Year 1 Trusts. It is represented that, to date, no taxable distributions, taxable terminations, or any other events have occurred with respect to the Year 1 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 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 2631(c) provides that, for purposes of § 2631(a), the GST exemption amount for any calendar year shall be equal to the applicable exclusion amount under § 2010(c) for such calendar year.

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 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 this subsection, 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 the exceptions enumerated in (i) through (vi) apply.

Section 2632(c)(5)(A)(i)(I) provides that an individual may elect to have § 2632(c) not apply to an indirect skip. 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.

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). 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 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) above.

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, 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). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

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.

Notice 2001-50, 2001-50, 2001-2 C.B. 189, provides that, under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping transfer trust are 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) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

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 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) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-3(a) provides, in part, that requests for relief subject to § 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 the grant of 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 upon the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, 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) for the transfers made during Years 1 through 3 to the Year 1 Trusts. The election should be made by filing complete and properly prepared supplemental Forms 709 for Years 1 through 3 within 120 days from the date of this letter, with the Service Center at the following address: Department of the Treasury, Internal Revenue Service, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. You should attach a copy of this letter 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, 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.

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 representative.

Sincerely,

Associate Chief Counsel
Passthroughs & Special Industries

Leslie H. Finlow

By: _____
Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure (1)

Copy for § 6110 purposes

cc: