

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201345029**

Release Date: 11/8/2013

Index Number: 2642.00-00, 9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

In Re:

Refer Reply To:

CC:PSI:B04

PLR-133195-13

Date:

August 09, 2013

Legend:

Taxpayer 1	=
Taxpayer 2	=
Son's Trust	=
Daughter's Trust	=
Attorney	=
Accounting Firm	=
Year 1	=
Date 1	=
Date 2	=

Dear :

This letter responds to your personal representative's letter of February 19, 2013, and subsequent correspondence, requesting an extension of time under §§ 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to elect under § 2632(c)(5) not to have generation-skipping transfer (GST) exemption deemed allocated by § 2632(c)(1) to a transfer to a trust.

In Year 1, on Date 1, Taxpayer 1 established two irrevocable trusts, one for each of her children (Son's Trust and Daughter's Trust), and gifted cash to each trust. The trusts have GST potential. A few days later, Attorney advised Taxpayer 1 and Taxpayer 2 by letter dated Date 2, to allocate their respective GST exemption to the gift to Daughter's Trust but not to the gift to Son's Trust. Attorney sent copies of the trusts and the Date 2 letter to Accounting Firm.

Taxpayer 1 and Taxpayer 2 retained Accounting Firm to prepare their Year 1 Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns. On the returns Taxpayer 1 and Taxpayer 2 elected to treat all gifts in Year 1 as made one-half by each pursuant to § 2513. On Taxpayer 2's return, Accounting Firm did not elect

under § 2632(c)(5) not to have Taxpayer 2's GST exemption deemed allocated by § 2632(c)(1) to the Date 1 gift to Son's Trust. Accounting Firm sent courtesy copies of Taxpayer 1's and Taxpayer 2's returns to Attorney.

Attorney discovered the failure to make the election under ' 2632(c)(5) for the gift to Son's Trust. Taxpayer 2 died and Taxpayer 1 has been appointed executrix of his estate.

Taxpayer 1, as executrix of Taxpayer 2's estate, is requesting relief under §§ 2642(g) and 301.9100-3 to elect under § 2632(c)(5) not to have Taxpayer 2's GST exemption deemed allocated by § 2632(c)(1) to the Date 1 gift to Son's Trust.

Law and Analysis:

Section 2601 imposes a tax on every GST, which 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 2631(c) provides that for purposes of § 2631(a), the GST exemption amount for any calendar year shall be equal to the basic exclusion amount under § 2010(c) for such calendar year.

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'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)(5)(A) provides that an individual--(i) may elect to have this subsection not apply to--(I) an indirect skip, or (II) any or all transfers made by such individual to a particular trust, and (ii) may elect to treat any trust as a GST trust for purposes of this subsection with respect to any or all transfers made by such individual

to such trust.

Section 2632(c)(5)(B)(ii) provides that an election under clause (i)(II) or (ii) of § 2632(c)(5)(A) 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)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than a direct skip, is made on Form 709. The allocation must clearly identify the trust to which the allocation is made, the amount of GST exemption allocated to it, and if the allocation is late or if an inclusion ratio greater than zero is claimed, the value of the trust assets at the effective date of the allocation.

Section 2642(b)(1) 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) -- (A) the value of such property for purposes of subsection (a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), and (B) such allocation shall be effective on and after the date of such transfer.

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)(1)(A), which was enacted into law on June 7, 2001.

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 (or election) 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 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 GST 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.

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 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. Therefore, Taxpayer 1 is granted an extension of time of 120 days from the date of this letter to elect under § 2632(c)(5) not to have Taxpayer 2's GST exemption deemed allocated by § 2632(c)(1) to the Date 1 gift to Son's Trust. The election will be effective as of Date 1. Taxpayer 2's GST exemption was deemed allocated to the Date 1 gift to Daughter's Trust by ' 2632(c)(1).

Taxpayer 1 should make the election on a supplemental Form 709 for Year 1 for Taxpayer 2 and file the form with the Internal Revenue Service, Cincinnati Service Center—Stop 82, Cincinnati, Ohio 45999. Taxpayer 1 should attach a copy of this letter to the form.

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) 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 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.

Sincerely,

James F. Hogan

James F. Hogan
Chief, Branch 4
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes