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Taxpayer retained Law Firm to prepare Taxpayer's Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. The transfer to Trust was correctly reported as an indirect skip on Schedule A, Part 3. Taxpayer elected out of the automatic allocation rules with respect to the transfer to Trust. Taxpayer also allocated GST exemption to the transfer on Schedule C, Part 2, Line 6. However, Law Firm failed to attach a Notice of Allocation for this transfer. Law Firm timely filed the Form 709 and attached a copy of Trust to the return.

Taxpayer requests a ruling that for purposes of § 2642(g)(2), the Form 709 contains sufficient information to constitute substantial compliance with the requirements of § 2632(a) to allocate Taxpayer's GST exemption to the transfer to Trust.

LAW AND ANALYSIS

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer 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 imposed by § 2601 is the taxable amount multiplied by the applicable rate. Section 2641(a) defines the term "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 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.

Section 2632(c)(5)(A)(i) provides that an individual may elect to have the automatic allocation rules of § 2632(c)(1) 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, in part, that the election 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)(ii) of the Generation-Skipping Transfer Tax Regulations provides that, except as otherwise provided in forms or other guidance published by the Service, 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). Notwithstanding § 26.2632-1(b)(2)(iii)(B), the transferor may also prevent the automatic allocation of

GST exemption with regard to an indirect skip by making an affirmative allocation of GST exemption on a Form 709 filed at any time on or before the due date for timely filing (within the meaning of § 26.2632-1(b)(1)(ii)) of an amount that is less than (but not equal to) the value of the property transferred as reported on that return, in accordance with the provisions of § 26.2632-1(b)(4).

Section 2642(g)(2) provides that an allocation of GST exemption under § 2632 that demonstrates an intent to have the lowest possible inclusion ratio with respect to a transfer to a trust shall be deemed to be an allocation of so much of the transferor's unused GST exemption as produces the lowest possible inclusion ratio. In determining whether there has been substantial compliance, all relevant circumstances shall be taken into account, including evidence of intent contained in the trust instrument.

In this case, Taxpayer elected out of the automatic allocation rules with respect to the transfer to Trust on a timely filed Form 709. Nonetheless, Taxpayer could still allocate GST exemption to the transfer by properly reporting the allocation on a timely filed Form 709. Taxpayer properly reported the allocation of GST exemption on Schedule C, Part 2, Line 6. However, Taxpayer failed to attach a Notice of Allocation with the Form 709. The information on the Form 709, in combination with the terms of Trust (a copy of which was attached to the return), demonstrates Taxpayer's intent to allocate \$a of his GST exemption to Trust and provides sufficient information to constitute substantial compliance under § 2642(g)(2).

Accordingly, based upon the facts submitted and the representations made, we conclude that, for purposes of § 2642(g)(2), Taxpayer substantially complied with the requirements of § 2632(a) to timely allocate his GST exemption to the transfer to Trust.

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.

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 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.

Sincerely,

Lorraine E. Gardner

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

Enclosures (2)

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