

Internal Revenue Service

Number: **201847003**

Release Date: 11/23/2018

Index Number: 9100.00-00, 2642.00-00

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:B04

PLR-105052-18

Date:

August 10, 2018

In Re:

LEGEND

| | |
|--------------|---|
| Date 1 | = |
| Husband | = |
| Wife | = |
| Trust | = |
| <u>X</u> | = |
| Company | = |
| Tax Preparer | = |
| Attorney | = |
| Date 2 | = |
| Year | = |
| Law Firm | = |

Dear :

This letter responds to your authorized representative's letter dated December 29, 2017, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to allocate generation-skipping transfer (GST) exemption to a trust.

FACTS

The facts submitted and the representations made are as follows:

On Date 1, a date prior to December 31, 2000, Husband and Wife established an irrevocable trust, Trust, for the benefit of their children and more remote descendants.

Accordingly, Trust has GST potential. On the same date, Husband transferred x shares of Company to Trust.

Trust was established on the advice of Attorney, who advised that Trust would be exempt from GST tax. Tax Preparer was informed of Trust, but due to the lack of effective communication, Husband and Wife each failed to file a timely Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, to report the Date 1 transfer to Trust and signify consent to treat all gifts made by both spouses as having been made one-half by each under § 2513. Accordingly, no GST exemption was allocated to the Date 1 transfer to Trust.

Recently, Husband and Wife engaged Law Firm for estate planning and tax preparation services and Law Firm discovered no Form 709 for Year had been filed by either Husband or Wife. On Date 2, on the advice of Law Firm, Husband and Wife each filed a Form 709 for Year. On his and her respective Form 709, Husband and Wife signified their consent to treat all gifts made by Husband and Wife in Year as having been made one-half by each spouse under § 2513. In addition, Husband and Wife each allocated GST exemption to the one-half portion of the Date 1 transfer that was attributable to them based on the consent under § 2513.

Wife requests an extension of time pursuant to § 2642(g) and §§ 301.9100-1 and 301.9100-3 to make a timely allocation of GST exemption to Wife's portion of the Date 1 transfer to Trust, effective as of the date of the transfer to Trust.

LAW AND ANALYSIS

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 him and one-half by his 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 during the calendar year by either while married to the other.

Section 25.2513-2(b)(1)(i) of the Gift Tax Regulations provides that the consent required by § 2513(a)(2) may not be signified after the 15th day of April following the close of the calendar year of the gift unless before such 15th day, no return has been filed for the year by either spouse, in which case the consent may not be signified after a return for the year is filed by either spouse.

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 2602 provides that the amount of the GST tax 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 2642(a)(1) provides that for purposes of chapter 13, the inclusion ratio with respect to any property transferred in a GST 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 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.

Section 2631(a), as in effect at the time of the transfer, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 that 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 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 is made on Form 709.

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, 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)).

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.

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 the gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of the GST tax.

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 301.9100-3 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).

Section 301.9100-3(a) provides, in part, that 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. For GST tax purposes, Wife will be treated as the transferor of one-half of the total value of the property transferred to Trust on Date 1. See § 25.2513-2(b)(1) and § 2652(a)(2). Wife is granted an extension of time of 120 days from the date of this letter to allocate GST exemption to that one-half portion of the transferred property. The allocation will be based on the value of the property transferred to Trust on Date 1 and effective as of the date of Date 1.

The allocation should be made on a supplemental Form 709 and filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center — Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the return.

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.

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.

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,

Associate Chief Counsel
(Passthroughs & Special Industries)

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

Enclosures (2)
Copy for §6110 purposes
Copy of this letter

cc: