

## Internal Revenue Service

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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-124811-18

Date:  
February 07, 2019

Re:

### Legend

Husband	=
Wife	=
Date	=
Year 1	=
Year 2	=
Year 3	=
Child 1	=
Child 2	=
Trust 1	=
Trust 2	=
Accounting Firm	=
Law Firm	=

Dear :

This letter responds to your personal representative's letter of August 13, 2018, and subsequent correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code (Code) and § 301.9100-3 of the Procedure and Administration Regulations to allocate generation-skipping transfer (GST) tax exemption to certain trusts.

The facts and representations submitted are as follows:

On Date, in Year 1, a date before December 31, 2000, Husband and Wife (Taxpayers) created two irrevocable trusts, Trust 1 for the primary benefit of Child 1 and her issue and Trust 2 for the primary benefit of Child 2 and her issue. Trust 1 and Trust 2 have GST tax potential.

Husband and Wife made gifts to Trust 1 and Trust 2 in Year 1 and Year 2, and relied upon Accounting Firm to prepare for each taxpayer a separate Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return reporting the transfers for Year 1 and Year 2. On each form, Husband and Wife signified their consent to treat the transfers occurring in Year 1 and Year 2 as having been made one-half by each spouse under § 2513 of the Code. This ruling request pertains to the gifts made to Trust 1 and Trust 2 in Year 1 only.

The gift tax returns for Year 1 as prepared by Accounting Firm failed to allocate any part of either Taxpayer's GST tax exemption to the Year 1 transfers to Trust 1 and Trust 2. The failure to allocate was discovered in Year 3 by Law Firm. Law Firm also ascertained that in the years after Year 1, Husband and Wife made several gifts to various other trusts for the benefit of their grandsons. It is represented that no distributions have been made from either Trust 1 or Trust 2 to a skip person as defined in § 2613.

Taxpayers each request an extension of time pursuant to § 2642(g) and § 301.9100-3 to allocate Taxpayers' available GST exemption to the Year 1 transfers to Trust 1 and Trust 2 and request that the GST exemption allocated to the transfers will be effective as of the date of each transfer.

### 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. Under § 2513(a)(2), paragraph (a)(1) only applies if both spouses have signified their consent to the application of paragraph (a)(1) in the case of all such gifts made during the calendar year by either while married to the other.

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," with respect to any GST transfer, 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 the inclusion ratio with respect to any property transferred in a generation-skipping transfer is the excess (if any) of one over the “applicable fraction.” Under 2642(a)(1), the applicable fraction is defined as 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 Year 1, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 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 26.2632-1(b)(4) 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 2642(b)(1) provides, in part, 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)) and such allocation will 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 this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, 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 under this paragraph, 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, in part, 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 and taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) 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 six 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(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules 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). 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.

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, Husband and Wife are granted an extension of time of 120 days from the date of this letter to allocate their available GST exemption to their respective share of the Year 1 transfers to Trust 1 and Trust 2. The allocations will be effective as of the date of the Year 1 transfers to Trust 1 and Trust 2 and the value of the transfers to Trust 1 and Trust 2 as determined for federal gift tax purposes will be used in determining the amount of Husband and Wife's GST exemption to be allocated to Trust 1 and Trust 2.

Each allocation should be made on an amended 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 each supplemental Form 709.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

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 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 rulings, it is subject to verification on examination.

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 representatives.

Sincerely,

Associate Chief Counsel  
Passthroughs and Special Industries

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

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

cc: