

## Internal Revenue Service

Number: **201529002**

Release Date: 7/17/2015

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.

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CC:PSI:B04

PLR-136110-14

Date: MARCH 26, 2015

In re:

### LEGEND:

Taxpayer =

Spouse =

Trust =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

x =

y =

Accountant =

Dear :

This letter responds to your authorized representative's letter of February 13, 2015, and other correspondence, requesting an extension of time under § 2642 of the Internal Revenue 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.

The facts, as represented, are as follows. On Date 1, Taxpayer created an irrevocable trust (Trust). Under Paragraph 3 of Trust,  $y\%$  of the Trust property is to be held for the benefit of her children during her life. Trust provides that, if Taxpayer's spouse (Spouse) survives Taxpayer, Spouse may exercise a limited testamentary power of appointment over a portion of the Trust property (which may include property initially held in the trusts established for the benefit of their children) in favor of any one or more of Taxpayer's descendants.

Taxpayer transferred \$ $x$  to Trust on Date 2 and another \$ $x$  to Trust on Date 3. Accountant prepared the Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns for Year 1 and Year 2 in which Taxpayer and Spouse elected to split the gifts for the trusts established for the benefit of their children under § 2513. The returns did not include an election out statement described in § 26.2632-1(b)(2)(iii) and § 26.2632-1(b)(b)(iv) *Example 7* to avoid the allocation of GST exemption. The failure to include the election out statement was later discovered.

Taxpayer now seeks a ruling granting an extension of time to elect out of the automatic allocation rules with respect to the transfers. To date, no taxable distributions, taxable terminations, or any other events have occurred with respect to the trusts that would give rise to a GST tax liability.

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 applicable rate as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Under § 2642(a), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is 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 the GST exemption under § 2631 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) 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)(1) provides that, for purposes of subsection (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(c)(3)(A) provides that for purposes of § 2632(c), 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, as defined in § 2632(c)(3)(B). Under § 2632(c)(5)(A)(i)(I) and (II), an individual may elect to have the automatic allocation rule in § 2632(c)(1) not apply to an indirect skip, or to any or all transfers made by such individual to a particular trust.

Section 2632(c)(5)(B)(ii) provides that an election under § 2632(c)(5)(A)(i)(II) 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)(2)(iii) of the Generation-Skipping Transfer Tax Regulations provides, in part, that to elect out, the transferor must attach a statement (election out statement) to a Form 709 filed within the time period provided in § 26.2632-1(b)(2)(iii)(C) (whether or not any transfer was made in the calendar year for which the Form 709 was filed, and whether or not a Form 709 otherwise would be required to be filed for that year). The election out statement must identify the trust (except for an election out under § 26.2632-1(b)(2)(iii)(A)(4)) 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. Further, unless the election out is made for all transfers made to the trust in the current year, the current-year transfers to which the election out is to apply must be specifically described or otherwise identified in the election out statement.

Section 26.2632-1(b)(2)(iii)(C) provides, in part, that to elect out, the Form 709 with the attached election out statement must be filed on or before the due date for timely filing (within the meaning of § 26.2632-1(b)(1)(ii)) of the Form 709 for the calendar year in which the first transfer to be covered by the election out was made.

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 § 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, 2001-2 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 § 301.9100-1 through 301.9100-3.

Sections 301.9100 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 9100-2 provides an automatic extension of time for making certain elections. Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose 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.

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) provides, in part, except as provided in § 301.9100-3(b)(3)(i) through (iii), 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 representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Taxpayer and Spouse are 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 to Trust during Year 1 and Year 2.

The election should be made on Supplemental Forms 709 and filed with the Internal Revenue Service Center in Cincinnati. A copy of this letter should be forwarded to the

Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999, for association with the Form 709. You should attach a copy of this letter to the Supplemental Forms 709. We have enclosed a copy for this purpose.

In accordance with the Power of Attorney on file with the office, we have sent a copy of this letter 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.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Melissa C. Liquerman  
Branch Chief, Branch 4

Enclosure  
Copy for § 6110 purposes