

Internal Revenue Service

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In Re:

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:04

PLR-123433-18

Date:

April 03, 2019

LEGEND:

Taxpayer =

Spouse =

Parent =

Child =

X =

Y =

Trust A =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

Trust 6 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Year 1 =

Year 2 =

Year 3 =
Attorney =
Accounting Firm =

Dear :

This letter responds to your authorized representative's letter of July 13, 2018, and subsequent correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to elect out under § 2632(c)(5) of the automatic allocation of generation-skipping transfer (GST) tax exemption.

Facts

The facts submitted and the representations made are as follows:

On Date 1, Parent created Trust A for the benefit of Taxpayer. Article V of Trust A provides that Taxpayer shall have the testamentary power to appoint part or all of Trust A property to the creditors of Taxpayer's estate. Article IV, Paragraph 4.b. grants Taxpayer the power, exercisable during life or by will, to appoint Trust A property for the benefit of Taxpayer's children born after Date 2.

On Date 3, a date after December 31, 2000, Taxpayer created Trust 1, a trust having GST tax potential. In the same year, on Date 4, Taxpayer exercised the limited power provided in Article IV, Paragraph 4.b. of Trust A by directing that the amount of \$x be transferred to and held as part of Trust 1's principal. In the following year, on Date 5, Taxpayer again exercised the limited power by directing that the amount of \$y be transferred to and held as part of Trust 1's principal. By virtue of the existence of Taxpayer's general testamentary power to appoint Trust A property, Taxpayer's exercise of the limited power on Date 4 and Date 5 resulted in a taxable gift of \$x in Year 2 and a taxable gift of \$y in Year 3.

On Date 6 in Year 1, also a date after December 31, 2000, Taxpayer created and funded Trust 2 and Trust 3, both irrevocable trusts. In the same year, on Date 7, Taxpayer created and funded Trust 4 and Trust 5, also irrevocable trusts. Each of Trusts 2 through 5 provide for the payment to Taxpayer of an annuity for a term of years and, upon the earlier of the expiration of such term or Taxpayer's death, for the payment of the remainder to Trust 6. Trust 6 has GST tax potential. Taxpayer survived the term in Trusts 2 through 5. For GST tax purposes, the estate tax inclusion period (ETIP), with respect to Trust 2 and Trust 3, closed on Date 8 of Year 3 and, with respect to Trust 4 and Trust 5, closed on Date 9 of Year 3.

Attorney provided Taxpayer with legal and tax advice in connection with the creation and funding of Trusts 1 through 5. Accounting Firm was retained to prepare any necessary Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return. In joint discussions with Attorney and members of Accounting Firm, Taxpayer was advised of the potential GST tax implications of the transfers. With respect to Trust 1, Taxpayer determined that Trust 1 would primarily benefit Child and directed that no GST tax exemption was to be allocated to Trust 1. Similarly, with respect to Trusts 2 through 5, Taxpayer determined that Trusts 2 through 5 would primarily benefit Taxpayer, Spouse, and children of Taxpayer and Spouse and directed that no GST tax exemption was to be allocated to Trusts 2 through 5.

For Years 2 and 3, Accounting Firm prepared, and Taxpayer and Spouse timely filed, Forms 709 reporting gift transfers not the subject of this ruling request. On these Forms 709, Taxpayer and Spouse consented to treat gifts as made one-half by each under § 2513. However, in preparing the Year 2 Form 709 and the Year 3 Form 709, Accounting Firm failed to report the transfers to Trust 1 that resulted from Taxpayer's exercises of the power of appointment provided in Trust A and failed to elect out of the automatic allocation of GST tax exemption to Trust 1 under § 2632(c)(5)(A)(i).

Further, in preparing Taxpayer's Year 3 Form 709, Accounting Firm failed to elect out of the automatic allocation of GST tax exemption under § 2632(c)(5)(A)(i) as of the close of the ETIPs with respect to the Year 1 transfers to Trusts 2 through 5.

Taxpayer represents that, to date, no taxable distributions, taxable terminations, or any other events have occurred with respect to any of the trusts that would result in a GST tax liability on the part of any of the trusts or their beneficiaries.

Taxpayer requests an extension of time under § 2642(g) and § 301.9100-3 to elect out of the automatic allocation of GST tax exemption under § 2632(c)(5)(A)(i) with respect to the \$x and \$y transfers to Trust 1. Taxpayer further requests an extension of time under § 2642(g) and § 301.9100-3 to elect out of the automatic allocation of GST tax exemption under § 2632(c)(5)(A)(i) with respect to the Year 1 transfers to Trusts 2 through 5.

Law and Analysis

Section 2601 imposes a tax on every GST. A GST 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 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 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.

Section 2632(c)(3)(A) provides that 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.

Section 2632(c)(4) provides that for purposes of § 2632(c), an indirect skip to which § 2642(f) applies shall be deemed to have been made only at the close of the ETIP. The fair market value of such transfer shall be the fair market value of the trust property at the close of the ETIP.

Section 2632(c)(5)(A)(i) provides that an individual may elect to have § 2632(c) not apply to an indirect skip or any or all transfers made by such individual to a particular trust.

Section 26.2632-1(b)(2)(iii)(A) of the Generation-Skipping Transfer Tax Regulations provides that a transferor may prevent the automatic allocation of GST exemption (elect out) with respect to: (1) one or more prior-year transfers subject to § 2642(f) (regarding ETIPs) made by the transferor to a specified trust or trusts; (2) one or more (or all) current-year transfers made by the transferor to a specified trust or trusts; (3) one or more (or all) future transfers made by the transferor to a specified trust or trusts; and (4) all future transfers made by the transferor to all trusts (whether or not in existence at the time of the election out).

Section 26.2632-1(b)(2)(iii)(B) provides that to elect out, the transferor must attach an election out statement to a Form 709 filed within the time period provided in § 26.2632-1(b)(2)(iii)(C). In general, the election out statement must identify the trust, 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. Prior-year transfers that are subject to § 2642(f), and to which the election out is to apply, must be specifically described or otherwise identified in the election out statement.

Under § 26.2632-1(b)(2)(iii)(C), to elect out, the Form 709 with the attached election out statement must be filed on or before the due date for timely filing the Form 709 for the calendar year in which: (1) for a transfer subject to § 2642(f), the ETIP closes; or (2) for all other elections out, the first transfer to be covered by the election out was made.

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)(1) only applies if both spouses have signified their consent to the application of this section in the case of all such gifts made during the calendar year by either while married to the other.

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 such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of chapter 13. Under § 26.2652-1(a)(4), in the case of a transfer with respect to which the donor's spouse makes an election under § 2513 to treat the gift as made one-half by the spouse, the electing spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513. The donor is treated as the transferor of one-half of the value of the entire property.

Section 2642(b)(1)(A) 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), 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)), or, in the case of an allocation deemed to have been made at the close of an ETIP, its value at the time of the close of the ETIP.

Section 2642(f)(1) provides that for purposes of determining the inclusion ratio, if an individual makes an inter vivos transfer of property, and the value of such property would be includible in the gross estate of such individual under chapter 11 if such

individual died immediately after making such transfer (other than by reason of § 2035), any allocation of GST exemption to such property shall not be made before the close of the ETIP (and the value of such property shall be determined under § 2642(f)(2)). If such transfer is a direct skip, such skip shall be treated as occurring as of the close of the ETIP.

Section 2642(f)(3) provides that for purposes of § 2642(f), the term “estate tax inclusion period” means any period after the transfer described in paragraph (1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under chapter 11 if he died.

Section 2642(g)(1)(A) provides, generally, 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).

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 § 301.9100-3.

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 Internal Revenue 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) 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.

Under § 301.9100-3(b)(1)(v), 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 upon the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Taxpayer is granted an extension of time of 120 days from the date of this letter to file supplemental Forms 709 to elect out under § 2632(c)(5)(A)(i) of the automatic allocation rules of § 2632(c)(1) for the transfers to Trusts 1 through 5. With respect to the \$x transfer to Trust 1, Taxpayer should make the election on a supplemental Form 709 for Year 2. With respect to the \$y transfer to Trust 1, Taxpayer should make the election on a supplemental Form 709 for Year 3. With respect to the Year 1 transfers to Trusts 2 through 5, Taxpayer should make the election on a supplemental Form 709 for the year in which the ETIP closes, Year 3. The forms should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Forms 709. A copy is enclosed for this purpose.

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, including whether the retained annuity interest is a qualified annuity interest under § 2702.

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.

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.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

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

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

cc: