

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-115311-19

Date:
November 25, 2019

In Re:

Legend

Date 1 =
Year 1 =
Donor =

Husband =

Trust 1 =

Beneficiary 1 =
Trust 2 =

Beneficiary 2 =
Date 2 =
Trust 3 =

Beneficiary 3 =
Trust 4 =

Beneficiary 4 =
Date 3 =
Year 2 =
Trust 5 =

Year 3 =
Beneficiary 5 =

Attorney =
Family Office =

Dear :

This letter responds to your personal representative's letter of June 26, 2019, requesting an extension of time under § 2642(g) of the Internal Revenue Code (Code) and § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to elect out of the generation-skipping transfer (GST) exemption automatic allocation rules with respect to certain transfers to trusts.

The facts and representations submitted are as follows:

On Date 1, in Year 1, a date after December 31, 2000, Donor and Husband (Taxpayers) established Trust 1, an irrevocable trust, for the benefit of Beneficiary 1. Trust 1 has GST potential.

Also on Date 1, Taxpayers established Trust 2, an irrevocable trust, for the benefit of Beneficiary 2. Trust 2 has GST potential.

On Date 2, in Year 1, Taxpayers established Trust 3, an irrevocable trust, for the benefit of Beneficiary 3. Trust 3 has GST potential.

Also on Date 2, Taxpayers established Trust 4, an irrevocable trust, for the benefit of Beneficiary 4. Trust 4 has GST potential.

On Date 3, in Year 2, a date after December 31, 2000, Taxpayers established Trust 5, an irrevocable trust, for the benefit of Beneficiary 5. Trust 5 has GST potential.

From Year 1 to Year 3, years after December 31, 2000, Donor transferred property to Trust 1, Trust 2, Trust 3 and Trust 4. From Year 2 to Year 3, Donor transferred property to Trust 5.

Taxpayers relied upon Attorney at Family Office to prepare for each a separate Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return reporting the transfers from Year 1 to Year 3. On each form, Taxpayers signified their consent to treat the transfers occurring from Year 1 to Year 3 as having been made one-half by each under § 2513 of the Code. Attorney failed to advise Taxpayers of the rules under § 2632(c) regarding the automatic allocation of GST exemption and the ability to elect out of the automatic allocation of GST exemption by making an election under § 2632(c)(5). As a result, Taxpayers did not elect to opt out of the automatic allocation of GST exemption for the transfers to Trust 1, Trust 2, Trust 3, Trust 4 and Trust 5.

GST exemption was automatically allocated to transfers to Trust 1, Trust 2, Trust 3 and Trust 4 in Year 1, and in subsequent years through Year 3, as a result of Taxpayers' failure to elect out of the GST automatic allocation rules for Trust 1, Trust 2, Trust 3 and Trust 4. Additionally, GST exemption was automatically allocated to transfers to Trust 5 in Year 2, and in subsequent years through Year 3, as a result of Taxpayers' failure to elect out of GST exemption automatic allocation rules for Trust 5.

Taxpayers request an extension of time under § 2642(g), § 301.9100-1 and § 301.9100-3 to elect out of automatic allocation of GST exemption for all transfers to Trust 1, Trust 2, Trust 3, Trust 4 and Trust 5 under § 2632(c)(5)(A)(i)(II).

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 GST. A GST is defined under § 2611(a) as, (1) a taxable distribution, (2) a taxable termination, and (3) a 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 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 is treated as allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Under § 2632(c)(3)(A), 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)(3)(B), a GST trust is a trust that could have GST potential with respect to the transferor unless the trust satisfies any of the exceptions listed in § 2632(c)(3)(B)(i)-(vi).

Section 2632(c)(5)(A)(i)(II) provides that an individual may elect to have § 2632(c)(1) not apply to any and all transfers made to a particular trust.

Section 26.2632-1(b)(2)(iii)(A) of the Generation-Skipping Transfer Tax Regulations provides, in relevant part, that a transferor may prevent (1) the automatic allocation of GST exemption (elect out) with respect to one or more (or all) current-year transfers made by the transferor to a specified trust or trusts and (2) the automatic allocation of GST exemption (elect out) with respect to all future transfers made by the transferor to a specified trust or trusts.

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. 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 26.2632-1(b)(2)(iii)(D) provides, in part, that an election out does not affect the automatic allocation of GST exemption to any transfer not covered by the election out statement. An election out does not prevent the transferor from allocating the transferor's available GST exemption to any transfer covered by the election out, either on a timely filed Form 709 reporting the transfer or at a later date in accordance with the provisions of paragraph (b)(4) of this section.

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 generation-skipping transfer 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.

Sections 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 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, a taxpayer 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)(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 representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Taxpayers are granted an extension of time of 120 days from the date of this letter to elect out of the automatic allocation rules with respect to all transfers Taxpayers made (or are treated as having made under § 2513) to Trust 1, Trust 2, Trust 3, Trust 4 and Trust 5.

Each election should be made on an amended Form 709 and filed with the Kansas City Service Center, at the following address: Department of the Treasury, Internal Revenue Service Center, Kansas City, MO 64999. A copy of this letter should be attached to the 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 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.

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

Melissa C. Liquerman
By: Melissa C. Liquerman
Branch Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

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

cc: