

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Third Party Communication: None  
Date of Communication: Not Applicable  
Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-113326-12

Date:

September 17, 2012

RE:

### Legend

Taxpayer =

Trust =

Year =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

CPA =

State =

x =

y =

Dear :

This responds to your letter dated March 14, 2012, in which you request an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make a § 2632(c) election to treat

Trust as a generation-skipping Transfer (GST) trust with respect to all transfers made by Taxpayer to Trust.

On Date 1, Taxpayer and his spouse established Trust under the laws of State, a community property state. Trust is an irrevocable trust. On Date 2, Taxpayer and his spouse transferred x shares of Company stock to Trust. On Date 3, Taxpayer and his spouse made a subsequent transfer of y dollars to Trust. Under State law, one-half of the value of each transfer is made from Taxpayer and one-half is made from Taxpayer's spouse. No distributions have been made from Trust.

On Date 4, Taxpayer reported the gifts he made on Date 2 and Date 3 on a timely filed Year Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. Taxpayer relied on CPA to complete the Year Form 709. CPA stated in an affidavit that on Taxpayer's Year Form 709, CPA erroneously underreported the value of taxable gifts made by Taxpayer and failed to timely elect under § 2632(c) to treat Trust as a GST trust with respect to all transfers made by Taxpayer to Trust. As a consequence, on Taxpayer's Year Form 709, insufficient exemption was allocated to Trust to maintain a zero inclusion ratio under § 2642(a).

Section 2601 imposes a tax on every generation-skipping transfer (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 "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 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), as in effect at the time of the transfer, provides that, for purposes of § 2631(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 2010(c)(3) provides that the basic exclusion amount (in effect at the time of Decedent's death) is \$5,000,000.

Section 2632(a)(1) provides that an individual's GST exemption may be allocated 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 return is required to be filed.

Section 2632(c)(1), as in effect at the time of the transfer, 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. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

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.

Section 2632(c)(5)(A)(ii) provides that an individual may elect to treat any trust as a GST trust for purposes of § 2632(c) with respect to any or all transfers made by such individual to such trust.

Section 2632(c)(5)(B)(ii) provides, in pertinent part, that an election under § 2632(c)(5)(A)(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)(3)(ii) of the Generation-Skipping Transfer Tax Regulations provides that to make a GST trust election, the transferor must attach a statement (GST trust election statement) to a Form 709 filed on or before the due date for timely filing the Form 709 for the calendar year in which the first transfer to be covered by the GST trust election is made (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 GST trust election statement must identify the trust, specifically describe or otherwise clearly identify the transfers to be covered by the election, and specifically provide that the transferor is electing to have the trust treated as a GST trust with respect to the covered transfers.

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, 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. Section 2642(g)(1)(B) further provides that for purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-1 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 allocations 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 date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(b)(1)(B) and Notice 2001-50, taxpayer seeks 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 representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer is granted an extension of time of 120 days from the date of this letter to elect to treat Trust as a GST trust for purposes of § 2632(c) with respect to all transfers made by Taxpayer to Trust. The GST election will be effective as of Date 4. The automatic allocation rules of § 2632(c) will automatically allocate Taxpayer's unused GST exemption to Trust. The value of the transfers to Trust, as determined for federal gift tax purposes, will be used in determining the amount of Taxpayer's unused GST exemption to be allocated to Trust.

This ruling is contingent on Taxpayer filing a supplemental Year Form 709 that includes the fair market value of property transferred to Trust in Year and on which

Taxpayer makes the election to treat Trust as a GST trust for purposes of § 2632(c) with respect to all transfers made by Taxpayer to Trust. Taxpayer's Year supplemental Form 709 and appropriate schedules should be filed with the Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, Ohio 45999.

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.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

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

Enclosure

Copy of this letter  
Copy for 6110 purposes

cc: