

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
February 14, 2013

Taxpayer =
Spouse =
Date 1 =
Date 2 =
Year 1 =
Year 2 =
State Statute =
Date 3 =
Trust A =
Grandchild 1 =
Trust B =
Grandchild 2 =
State =
Attorney =
Date 4 =
x =
Grandchild 3 =
Grandchild 4 =
Accountant =
Date 5 =
Date 6 =
Date 7 =

Dear

This letter responds to your personal representative's letter of July 31, 2012, and subsequent correspondence, in which you request an extension of time pursuant to § 2642 of the Internal Revenue Code and § 301.9100-3 of the Procedure and

Administration Regulations to elect out of the generation-skipping transfer (GST) exemption automatic allocation rules.

The facts and representations submitted are summarized as follows.

Taxpayer and Spouse are husband and wife with respective dates of birth of Date 1 and Date 2. During Year 1 and Year 2, Spouse suffered from dementia and poor health and required 24-hour nursing care. Taxpayer possessed power of attorney over Spouse's affairs, with broad powers described in State Statute.

On Date 3, Taxpayer established Trust A for the sole benefit of Grandchild 1 and Trust B for the sole benefit of Grandchild 2. Trusts A and B are irrevocable trusts created under the laws of State. Both trusts were drafted by Attorney. On Date 4, Taxpayer transferred \$x in cash to each trust and, individually, to Grandchild 3 and Grandchild 4.

Soon after making the Date 4 transfers, Taxpayer experienced a series of health issues. Neither Attorney nor the longtime accountant of Taxpayer and Spouse (Accountant) was aware of Taxpayer's poor health during this period.

On Date 5, Attorney sent a letter to Taxpayer advising Taxpayer of the need to file Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return, to report the gifts. In the letter, Attorney indicated, but did not specifically advise, of the need to elect out of the automatic allocation of GST tax exemption under § 2632(c). Attorney did not provide Accountant with a copy of the letter or information regarding the transfers.

Timely Year 1 Forms 709 were not filed on behalf of Taxpayer or Spouse. Soon after the filing due date, Attorney discovered that Forms 709 had not been filed and sent Taxpayer a letter advising of the need to file and suggesting that Taxpayer file a request for a letter ruling to request an extension of time to file the return under § 301.9100-3.

On Date 6, Year 1 Forms 709 were filed as prepared by Accountant for Taxpayer and Spouse. The Year 1 Forms 709 signified the consent of the respective spouse to each treat the gifts as having been made one-half by each spouse under I.R.C. § 2513, reported the transfers, and attempted to elect out of the automatic allocation of GST.

Taxpayer requests an extension of time under § 2642(g) and § 301.9100-3 to elect out of the automatic allocation of GST exemption with respect to the Year 1 transfers to Trust A, Trust B, Grandchild 3, and Grandchild 4.

LAW AND ANALYSIS

Section 2601 provides that a tax is imposed on every generation-skipping transfer (GST). Section 2611(a) provides that the term “generation-skipping transfer” means: (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 2612(c) provides that the term “direct skip” means a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) provides, in part, that the term “skip person” means — (1) a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor, or (2) a trust — (A) if all interests in such trust are held by skip persons, or (B) if — (i) there is no person holding an interest in such trust, and (ii) at no time after such transfer may a distribution (including distributions on termination) be made from such trust to a nonskip person.

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) provides that, for purposes of § 2631(a), the GST exemption amount for any calendar year shall be equal to the applicable exclusion amount under § 2010(c) for such calendar year.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST exemption may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate, regardless of whether such a return is required to be filed. Section 2632(a)(2) provides that the manner in which allocations are to be made shall be prescribed by forms or regulations issued by the Secretary.

Section 2632(b)(1) provides that if any individual makes a direct skip during his lifetime, any unused portion of such individual's GST exemption shall be deemed to be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero (automatic allocation). If the amount of the direct skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(b)(2) provides that for purposes of § 2632(b)(1), the unused portion of an individual's GST exemption is that portion of such exemption which has not previously

been allocated by such individual (or treated as allocated under § 2632(b)(1) or § 2632(c)(1)).

Section 2632(b)(3) provides that an individual may elect to have the automatic allocation rule of § 2632(b)(1) not apply to a transfer.

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.

Section 2641(b) provides that the term “maximum Federal estate tax rate” means the maximum rate imposed by § 2001 on the estates of decedents dying at the time of the taxable distribution, taxable termination, or direct skip, as the case may be.

Section 302(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TRUIRJA), P.L. 111-312 (124 Stat. 3296), provides that in the case of any GST made after December 31, 2009, and before January 1, 2011, the applicable rate determined under § 2641(a) shall be zero.

Under § 2642(a)(1), 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, 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 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). 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 § 301.9100-3.

Sections 301.9100-1 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 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, 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)(ii) provides that (except as provided in § 301.9100-(b)(3)(i) through (iii)) a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because of intervening events beyond the taxpayer's control. In addition, § 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, Taxpayer is granted an extension of time of 120 days from the date of this letter to make an election under § 2632(b)(3) that the automatic allocation rules do not apply to the Year 1 transfers to Trust A, Trust B, Grandchild 3, and Grandchild 4. The election should be made on a supplemental Form 709 for Year 1. The Form 709 should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999. You should attach a copy of this letter to the supplemental Form 709. We have enclosed a copy for this purpose.

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 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.

Sincerely,

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
(Passthroughs & Special Industries)