

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201407001**

Release Date: 2/14/2014

Index Number: 2632.02-00, 2642.00-00,
9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-115867-13
PLR-115868-13

Date:
September 19, 2013

Legend

- Donor =
- Spouse =
- Trust =
- Date =
- Child 1 =
- Child 2 =
- Law Firm =
- Consultant =
- Accounting Firm =
- Year 1 =
- Year 2 =
- Year 3 =

Dear _____ :

This letter responds to your authorized representative’s letter dated March 29, 2013, 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 of the generation-skipping transfer (GST) exemption automatic allocation rules.

The facts and representations submitted are summarized as follows:

On Date, a date in Year 1, Donor established an inter vivos irrevocable trust (Trust) for the primary benefit of Donor’s children, Child 1 and Child 2. Child 1 and Child 2 are the

primary beneficiaries of Trust and their descendants are eligible beneficiaries of Trust. Trust was funded with a portion of Donor and Spouse's interest in real property. Law Firm prepared the Trust agreement.

The terms of Trust provide that each child has the right to withdraw their respective share of Trust's principal after attaining the age of 55. Additionally, it was contemplated by Trust that personal vacation residences would be constructed by Trust on the real property transferred to Trust and that Trust's interest in the vacation residences would be distributed to Child 1 and Child 2 prior to their attaining the age of 55.

Consultant is a licensed CPA and was retained by Donor and Spouse in Year 2 to manage their business and personal affairs. Specifically, Consultant was hired to provide tax planning and tax reporting advice and communicate with Donor and Spouse's accountants (Accounting Firm) regarding tax preparation.

In conjunction with the preparation of the Trust agreement, Law Firm sent a letter to Donor and Spouse in which it summarized the terms of Trust. In addition, Law Firm recommended against allocating GST exemption to the Year 1 transfers to Trust, because the property could be withdrawn by Child 1 and Child 2 once they attained the age of 55 and because it was anticipated that the property would be distributed outright to Child 1 and Child 2 prior to their attaining age 55.

Accounting Firm prepared the Forms 709, United States Gift (and Generation-Skipping) Tax return and asked Consultant if they should elect out of the automatic allocation of GST exemption for the transfers to Trust in Year 1. Consultant was not aware that Law Firm had recommended against the automatic allocation of GST exemption and thus failed to advise Accounting Firm accordingly.

The error was discovered when Law Firm received copies of the Year 1 Forms 709 at the end of Year 3.

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.

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(c)(1) provides that if any individual makes an indirect skip during his 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 (automatic allocation). 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)(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(c)(5) 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.

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 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, 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 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 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) 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 the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Donor and Spouse are granted an extension of time of 120 days from the date of this letter to make an election under § 2632(c)(5) that the automatic allocation rules do not apply to the Year 1 transfers to Trust. The election out will be effective as of the date of the transfers, Date. The election should be made on supplemental Forms 709 for Year 1. The Forms 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 Forms 709. We have enclosed a copy for this purpose.

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

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Further, we express no opinions regarding the when the gifts were complete under State law.

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.

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

Sincerely,

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

Enclosures

Copy for § 6110 purposes
Copy of this letter