

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201443013**
Release Date: 10/24/2014

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 2632.00-00, 9100.00-00

Person To Contact:
, ID No.

Telephone Number:

In Re: Ruling Request

Refer Reply To:
CC:PSI:B04
PLR-119883-14
Date:
July 16, 2014

Legend:

Donor	=
Trust 1	=
Trust 2	=
Date 1	=
Date 2	=
Year 1	=
Year 2	=
Year 3	=

Dear :

This responds to your letter dated May 1, 2014 and subsequent correspondence, from your authorized representative, 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 automatic allocation of generation-skipping transfer (GST) exemption under § 2632(c)(1) to a transfer to a trust at the close of an estate tax exclusion period (ETIP), as defined in § 2642(f).

The facts submitted and the representations made are as follows. On Date 1 in Year 1, a date after December 31, 2000, Donor established Trust 1, a grantor retained annuity trust. At the end of five years, on Date 2 in Year 2, Donor's retained interest in Trust 1 terminated and the assets of Trust 1 passes to Trust 2. Trust 2 has GST tax potential. The ETIP with respect to Donor's transfer to Trust 1 closed for GST tax purposes on Date 2 in Year 2, which is a date also after December 31, 2000.

Donor retained a tax professional to prepare Donor's Year 2 Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. In preparing Donor's Form 709, the tax professional inadvertently failed to elect out of the automatic allocation of GST exemption to the transfer to Trust 2 on Date 2, the close of the ETIP. The tax professional discovered that Donor's GST exemption had been automatically

allocated to Trust 2 at the close of the ETIP shortly after the Year 2 Form 709 had been filed in Year 3. The tax professional states that Donor never intended to allocate his GST exemption to Trust 2 and that the failure to elect out of the automatic allocation was inadvertent.

Donor requests an extension of time under § 301.9100-3 to, pursuant to § 2632(c)(5), elect out of the automatic allocation rules under § 2632(c)(1) for the Date 2 transfer to Trust 2.

Law and Analysis

Section 2601 imposes a tax on every GST (within the meaning of subchapter B). Section 2611 defines a GST 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 determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term “applicable rate” means with respect to any GST transfer, the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under § 2642(a), the inclusion ratio with respect to any property transferred in a GST is generally defined as the excess 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 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.

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 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. 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)(4) provides that for purposes of this subsection, an indirect skip to which § 2642(f) applies shall be deemed to have been made only at the close of the estate tax inclusion period. The fair market value of such transfer shall be the fair market value of the trust property at the close of the estate tax inclusion period.

Section 2632(c)(5)(A)(i)(I) provides that an individual may elect to have this subsection not apply to an indirect skip.

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 2642(f)(1) provides that, except as provided in regulations, for purposes of determining the inclusion ratio, if--(A) an individual makes an inter vivos transfer of property, and (B) 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 estate tax inclusion period (and the value of such property shall be determined under § 2632(f)(2)). If such transfer is a direct skip, such skip shall be treated as occurring as of the close of the estate tax inclusion period.

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 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 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). In accordance with § 2642(b)(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)(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 on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Donor is granted an extension of

time of 120 days from the date of this letter to amend his Year 2 Form 709 to elect, under § 2632(c)(5), out of the automatic allocation rules of § 2632(c)(1) for the Date 2 transfer to Trust 2.

Donor should make the election on a Year 2 supplemental Form 709 and file this form with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the Form 709.

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) 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,

Associate Chief Counsel
(Passthroughs & Special Industries)

Lorraine E. Gardner

By: _____
Lorraine E. Gardner, Senior Counsel
Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes