

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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PLR-143964-14

Date:

May 22, 2015

In re:

### LEGEND:

Taxpayer =

Spouse =

Child =

Grandchild A =

Grandchild B =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Date =

a =

b =

c =

d =

e =

f =

g =

h =

x =

Dear \_\_\_\_\_ :

This letter responds to your authorized representative's letter of November 21, 2014, and other correspondence, requesting a ruling on the application of § 2632 of the Internal Revenue Code (Code) to certain allocations of generation-skipping transfer (GST) tax exemption.

The relevant facts, as represented, are as follows.

From Year 2 through Year 5, Taxpayer and his spouse (Spouse) made outright gifts to Grandchild A and Grandchild B. Grandchild A and Grandchild B are the children of Taxpayer and Spouse's child (Child). Child died in Year 1 (approximately x years before Year 2).

For Year 2 through Year 5, Taxpayer and Spouse timely filed Forms 709, United States Gift (and Generation-Skipping Transfer Tax) Returns, reporting the gifts for which each elected to treat as made one-half by each (as provided under § 2513). On his and her respective Forms 709, Taxpayer and Spouse allocated GST exemption (as provided in § 2631) to the reported gifts to Grandchild A and Grandchild B.

On his and her respective Forms 709 filed for Year 2, Taxpayer and Spouse each allocated \$a of his or her GST exemption amount to the gifts made outright to Grandchild A and \$b of his or her GST exemption amount to the gifts made outright to Grandchild B. On his and her respective Forms 709 filed for Year 3, Taxpayer and Spouse each allocated \$c of his or her GST exemption amount to the gifts made outright to Grandchild A and \$d of his or her GST exemption amount to the gifts made outright to Grandchild B. On his and her respective Forms 709 filed for Year 4, Taxpayer and Spouse each allocated \$e of his or her GST exemption amount to the gifts made outright to Grandchild A and \$f of his or her GST exemption amount to the gifts made outright to Grandchild B. On his and her respective Forms 709 filed for Year 5, Taxpayer and Spouse each allocated \$g of his or her GST exemption amount to the gifts made outright to Grandchild A and \$h of his or her GST exemption amount to the gifts made outright to Grandchild B.

Taxpayer died on Date. The personal representative of his estate requests a ruling that the allocations of GST exemptions to the gifts made outright to Grandchild A and Grandchild B in Year 2 through Year 5 are void because there was no GST potential with respect to those transfers.

### Law and Analysis

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 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 a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor.

Section 2623 provides that the taxable amount in the case of a direct skip shall be the value of the property received by the transferee.

Section 2631(a) provides, in part, that 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 subsection (a), once made, shall be irrevocable.

Section 2631(c) provides that, for purposes of subsection (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 2651(b)(1) provides that an individual who is a lineal descendant of a grandparent of the transferor shall be assigned to that generation which results from comparing the number of generations between the grandparent and such individual with the number of generations between the grandparent and the transferor.

Section 2651(e)(1) provides that, for purposes of determining whether any transfer is a GST, if—

- (A) an individual is a descendant of a parent of the transferor (or the transferor's spouse or former spouse), and
- (B) such individual's parent who is a lineal descendant of the parent of the transferor (or the transferor's spouse or former spouse) is dead at the time the transfer (from which an interest of such individual is established or derived) is subject to a tax imposed by chapter 11 or 12 of the Code upon the transferor,

such individual shall be treated as if such individual were a member of the generation which is 1 generation below the lower of the transferor's generation or the generation assignment of the youngest living ancestor of such individual who is also a descendant of the parent of the transferor (or the transferor's spouse or former spouse), and the generation assignment of any descendant of such individual shall be adjusted accordingly.

Section 26.2632-1(b)(4)(i) of the Generation-skipping Transfer Tax Regulations provides, in part, that, with respect to a timely allocation, an allocation of GST exemption becomes irrevocable after the due date of the return. An allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the trust. An allocation is also void if the allocation is made with respect to a trust that has no GST potential with respect to the transferor making the allocation, at the time of the allocation. For this purpose, a trust has GST potential even if the possibility of a GST is so remote as to be negligible.

Section 26.2651-1(a) provides that this paragraph (a) applies for purposes of determining whether a transfer to or for the benefit of an individual who is a descendant of a parent of the transferor (or the transferor's spouse or former spouse) is a generation-skipping transfer. If that individual's parent, who is a lineal descendant of the parent of the transferor (or the transferor's spouse or former spouse), is deceased at the time the transfer (from which an interest of such individual is established or derived), is subject to the tax imposed on the transferor by chapter 11 or 12 of the Code, the individual is treated as if that individual were a member of the generation that is one generation below the lower of—

- (i) The transferor's generation; or
- (ii) The generation assignment of the individual's youngest living lineal ancestor who is also a descendant of the parent of the transferor (or the transferor's spouse or former spouse).

Section 26.2651-1(c), Example 1, states that T establishes an irrevocable trust, Trust, providing that trust income is to be paid to T's grandchild, GC, for 5 years. At the end of the 5-year period or on GC's prior death, Trust is to terminate and the principal is to be distributed to GC if GC is living or to GC's children if GC has died. The transfer that occurred on the creation of the trust is subject to the tax imposed by chapter 12 of the Code and, at the time of the transfer, T's child, C, who is a parent of GC, is deceased. GC is treated as a member of the generation that is one generation below T's generation. As a result, GC is not a skip person and Trust is not a skip person. Therefore, the transfer to Trust is not a direct skip. Similarly, distributions to GC during the term of Trust and at the termination of Trust will not be GSTs.

In this case, Taxpayer and Spouse's transfers to Grandchild A and Grandchild B were made outright rather than in trust. At the time of the initial transfers in Year 2 by Taxpayer and Spouse to Grandchild A and Grandchild B, Child, who was the parent of Grandchild A and Grandchild B, had been deceased for approximately x years. In these circumstances, Grandchild A and Grandchild B are treated as members of the generation that is one generation below the generation of Taxpayer and Spouse. See § 2651(e).

Consequently, Grandchild A and Grandchild B were not skip persons with respect to Taxpayer and Spouse at the time of the transfers, and the transfers to Grandchild A and Grandchild B were not direct skips. In these circumstances, the transfers to Grandchild A and Grandchild B had no GST potential at the time of the transfers. Accordingly, the allocations of GST exemption made on the Forms 709 reporting the transfers to Grandchild A and Grandchild B in Year 2 through Year 5 are void. See § 26.2632-1(b)(4)(i).

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

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

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

Sincerely,

Karlene Lesho  
Senior Technical Reviewer, Branch 4  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure  
Copy for § 6110 purposes