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Department of the Treasury

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Person To Contact:

, ID No.

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In Re:

Refer Reply To:

CC:PSI:B04

PLR-101772-15

Date:

June 23, 2015

Legend:

Taxpayer 1	=
Taxpayer 2	=
Taxpayer 3	=
Son	=
Trust	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	=
Year 7	=
Year 8	=
Year 9	=
Year 10	=
Year 11	=
Year 12	=
Year 13	=
Year 14	=
V	=
W	=
X	=
Y	=

Dear _____ :

This letter responds to your authorized representative's letter of December 29, 2014, and subsequent correspondence, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code (Code) and § 301.9100 of the Procedure and Administration Regulations to allocate generation-skipping transfer (GST) exemption to transfers to a trust.

The facts submitted and the representations made are summarized as follows. On Date 1, Taxpayer 1 and Taxpayer 2 established an irrevocable trust (Trust) for the benefit of Taxpayer 3 and the descendants of Taxpayer 3 and Son. Trust is a GST trust within the meaning of § 2632(c)(3)(B).

In Years 1 through Year 14 (except Year 12), Taxpayer 1 gifted assets that were his separate property to Trust. In each of these years, Taxpayer 1 and Taxpayer 2 filed a Federal gift tax return reporting each transfer on which both taxpayers elected under § 2513 to treat gifts made by each as made by both in that year. Neither taxpayer allocated GST exemption to the transfers on their respective Federal gift tax returns.

Article III, paragraph B.2 of Trust provides that Taxpayer 3 has a right, for a period of 30 days following any contribution to Trust, to withdraw an amount equal to the portion of the contribution constituting an exclusion from gifts within the meaning of § 2503(b). Article III, paragraph E provides that each power of withdrawal granted to Taxpayer 3 is noncumulative and lapses if not exercised. The trust document does not limit Taxpayer 3's withdrawal right by the amounts set forth in § 2514(e). It has been represented that Taxpayer 3 never exercised her withdrawal rights. It has been further represented that with respect to the transfers to Trust in Years 1 through 8, Taxpayer 3 had the right to withdraw amounts from these transfers that exceeded the amounts in § 2514(e). Years 1 through Year 8 are prior to January 1, 2001.

A few months after the transfer to Trust in Year 14, Taxpayer 3 died on Date 2. The following has been represented. Taxpayer 3's estate did not file a Federal estate tax return because it was not required to as the value of her estate was below the basic exclusion amount under § 2010(c) for Year 14. See § 6018(a). The beneficiaries of her estate were her children. During life, Taxpayer 3 did not make transfers (other than the transfers to Trust) that were direct or indirect skips within the meaning of § 2612(c)(1) and § 2632(c)(3)(A). As a result, Taxpayer 3 had available GST exemption of \$V on Date 2. The total value of Trust on Date 2 is represented to have been \$W, which is less than \$V.

Taxpayer 2 died three years later on Date 3. The following has been represented. As a result of her death a transfer to a testamentary trust with GST tax

potential occurred that was valued on her Federal estate tax return in the amount of \$X. This amount exceeded her available GST exemption of \$Y on Date 3. No Schedule R was attached to the Federal estate tax return filed for her estate.

Taxpayer 1 died several years later on Date 4. As a result of his death, the failure to allocate GST exemption to Trust by all three taxpayers was discovered. It has been represented that Taxpayer 1 has sufficient available GST exemption to allocate to the transfers to Trust he made in Years 1 through 8.

The executrix of the estates of Taxpayer 1 and Taxpayer 2 has requested an extension of time to allocate each taxpayer's available GST exemption to his or her respective transfers to Trust for Years 1 through and Year 8 under § 2642(g)(1) and § 301.9100-3, effective as of the date of each transfer.

Law and Analysis

Section 2513(a)(1) provides in part that a gift made by one spouse to any person other than his spouse is considered as made one-half by him and one-half by his spouse.

Section 2514(b) provides that the exercise or release of a general power of appointment created after October 21, 1942, is deemed a transfer of property by the individual possessing such power.

Section 2514(e) provides that the lapse of a power of appointment created after October 21, 1942, during the life of the individual possessing the power is considered a release of such power. The rule of the preceding sentence applies with respect to the lapse of powers during any calendar year only to the extent that the property which could have been appointed by exercise of such lapsed powers exceeds in value the greater of the following amounts: (1) \$5,000, or (2) 5 percent of the aggregate value of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could be satisfied.

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)(1) defines the term "direct skip" as a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2631(a), in effect for Years 1 through Year 11, provided that, for purposes of determining the inclusion ratio, every individual is allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2631(a), in effect for Years 12 through Year 14, provides that for purposes of determining the inclusion ratio, every individual is 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, is irrevocable.

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 is allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. This section is effective for transfers made after December 31, 2000.

Section 2632(c)(3)(A) defines the term "indirect skip" to be a transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust (defined in § 2632(c)(3)(B)).

Section 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709, a Federal gift tax return.

Section 2632(e)(1) provides that any portion of an individual's GST exemption which has not been allocated within the time prescribed by § 2632(a) is deemed to be allocated as follows--(A) first, to property which is the subject of a direct skip occurring at such individual's death, and (B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

Section 2632(e)(2)(A) provides that the allocation under § 2632(e)(1) is made among the properties described in § 2632(e)(2)(A) and the trusts described in § 2632(e)(2)(B), as the case may be, in proportion to the respective amounts (at the time of allocation) of the nonexempt portions of such properties or trusts.

Section 2632(e)(2)(B) provides that for purposes of § 2632(e)(2)(A), the term "nonexempt portion" means the value (at the time of allocation) of the property or trust, multiplied by the inclusion ratio with respect to such property or trust.

Section 26.2632-1(d)(2) provides in part that a decedent's unused GST exemption is automatically allocated on the due date for filing Form 706 (Federal estate tax return) to the extent not otherwise allocated by the decedent's executor on or before that date. The automatic allocation occurs whether or not a return is actually required to be filed. Unused GST exemption is allocated pro rata (subject to the rules of

§ 26.2642-2(b)), on the basis of the value of the property as finally determined for purposes of chapter 11 (chapter 11 value), first to direct skips treated as occurring at the transferor's death. The balance, if any, of unused GST exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)) on the basis of the chapter 11 value of the nonexempt portion of the trust property (or in the case of trusts that are not included in the gross estate, on the basis of the date of death value of the trust) to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. The automatic allocation of GST exemption is irrevocable, and an allocation made by the executor after the automatic allocation is made is ineffective.

Section 26.2642-4(a) provides that the applicable fraction for a trust is redetermined whenever additional exemption is allocated to the trust or when certain changes occur with respect to the principal of the trust. Except as otherwise provided in this paragraph (a), the numerator of the redetermined applicable fraction is the sum of the amount of GST exemption currently being allocated to the trust (if any) plus the value of the nontax portion of the trust, and the denominator of the redetermined applicable fraction is the value of the trust principal immediately after the event occurs. The nontax portion of a trust is determined by multiplying the value of the trust assets, determined immediately prior to the event, by the then applicable fraction.

Section 26.2642-4(a)(1) provides that if property is added to an existing trust, the denominator of the redetermined applicable fraction is the value of the trust immediately after the addition reduced as provided in § 26.2642-1(c).

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 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 this paragraph, 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 under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Section 2652(a)(1)(B) provides that the term "transferor" means the donor in the case of any property subject to the tax imposed by chapter 12.

Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of such individual, such gift is so treated for purposes chapter 13.

Section 26.2652-1(a)(4) provides that in the case of a transfer with respect to which the donor's spouse makes an election under § 2513 to treat the gift as made one-half by the spouse, the electing spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513. The donor is treated as the transferor of one-half of the value of the entire property.

Section 2654(b)(1) provides that the portions of a trust attributable to transfers from different transferors shall be treated as separate trusts. Except as provided in the preceding sentence, nothing in this chapter shall be construed as authorizing a single trust to be treated as 2 or more trusts.

Section 26.2654-1(a)(2)(i) provides that if there is more than one transferor with respect to a trust, the portions of the trust attributable to the different transferors are treated as separate trusts for purposes of chapter 13. Treatment of a single trust as separate trusts under this paragraph (a)(2) does not permit treatment of those portions as separate trusts for purposes of filing returns and payment of tax or for purposes of computing any other tax imposed under the Code. Also, additions to, and distributions from, such trusts are allocated pro rata among the separate trusts unless otherwise expressly provided in the governing instrument.

Section 26.2654-1(a)(2)(ii) provides that if an individual makes an addition to a trust of which the individual is not the sole transferor, the portion of the single trust attributable to each separate trust is determined by multiplying the fair market value of the single trust immediately after the contribution by a fraction. The numerator of the fraction is the value of the separate trust immediately after the contribution. The denominator of the fraction is the fair market value of all the property in the single trust immediately after the transfer.

Notice 2001-50, 2001-2 C.B. 189, provides that, under § 2642(g)(1)(B), the time for allocating GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute and taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) 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.

In this case, Taxpayer 1 and Taxpayer 2 were transferors for GST tax purposes of one-half of each transfer Taxpayer 1 made to Trust in Years 1 through 14 (except Year 12 when no transfer was made) because Taxpayer 1 made gifts to Trust and Taxpayer 1 and Taxpayer 2 elected on their respective Federal gift tax returns filed for

Years 1 through Year 14 (except Year 12) under § 2513 to treat any gift made by either in that year as made by both. See § 2652(a)(1)(B), § 2652(a)(2), and § 26.2652-1(a)(4). Further, upon the lapse of each withdrawal right in Years 1 through Year 8, Taxpayer 3 became the transferor for GST tax purposes of the portion of each contribution over which Taxpayer 3 had a right to withdrawal an amount that was in excess of the amounts set forth in § 2514(e). See § 2514(b) and § 2652(a)(1)(B). Accordingly, beginning in Year 1, Trust had three transferors for GST tax purposes of three separate trusts within Trust. See § 2654(b)(1) and § 26.2654-1(a)(2)(i). Section 26.2654-1(a)(2)(ii) indicates how to determine the value of each taxpayer's separate trust within Trust each time a transfer was made to Trust.

Taxpayer 1 and Taxpayer 2 did not allocate GST exemption to the transfers to Trust in Years 1 through Year 14 (except Year 12) on their respective Federal gift tax returns, and Taxpayer 3 did not file any Federal gift tax returns. Beginning in Year 9, however, § 2632(c)(1) deemed the respective GST exemptions of Taxpayer 1 and Taxpayer 2 to be allocated in an amount equal to the fair market value of each gift they made to Trust in Years 9 through Year 14 (except Year 12). See § 2632(c)(1). Since all of Taxpayer 3's transfers to Trust occurred in years prior to January 1, 2001, none of Taxpayer 3's GST exemption was deemed allocated to her separate trust within Trust by § 2632(c)(1). Section 26.2642-4(a) and (a)(1) indicate how to calculate the inclusion ratio of a trust each time a transfer is made.

When Taxpayer 3 died on Date 2, Taxpayer 3's available GST exemption of \$V was deemed allocated to the separate trust within Trust of which she was the transferor based upon the value of the nonexempt portion of that separate trust on Date 2. See § 2632(e)(1), § 2632(e)(2)(A) and (B), and § 26.2632-1(d)(2). As previously noted the total value of Trust on Date 2, is represented to be \$W, which is less than \$V. Therefore, Taxpayer 3 had sufficient available GST exemption to allocate to this separate trust as of Date 2 such that this separate trust had a zero inclusion ratio as of Date 2.

Finally, when Taxpayer 2 died on Date 3, Taxpayer 2's available GST exemption of \$Y was deemed allocated in proportion to the nonexempt portion of the separate trust within Trust of which she was the transferor and the value of the assets transferred to the testamentary trust as of Date 3. See § 2632(e)(1), § 2632(e)(2)(A) and (B), and § 26.2632-1(d)(2).

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, the executrix of Taxpayer 1's estate is granted an extension of time of 120 days from the date of this letter to allocate Taxpayer 1's available GST exemption to the transfers he made to Trust in Years 1 through Year 8, chronologically. The allocations will be effective as of the date of each transfer and the fair market value of each transfer (as determined for

Federal gift tax purposes) will be used to determine the amount of Taxpayer 1's GST exemption to be allocated to each of his transfers to Trust.

The executrix of Taxpayer 2's estate is granted an extension of time of 120 days from the date of this letter to allocate the GST exemption deemed allocated to the nonexempt portion of Taxpayer 2's separate trust within Trust on Date 3 to the transfers she made to Trust in Years 1 through Year 8, chronologically. The allocations will be effective as of the date of each transfer and the fair market value of each transfer to Trust (as determined for Federal gift tax purposes) will be used to determine the amount of the GST exemption deemed allocated to Taxpayer 2's separate trust within Trust to be allocated to each of her transfers to Trust.

The allocations made for Taxpayer 1 and Taxpayer 2 should be made on supplemental Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return) for Years 1 through Year 8 and filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to each supplemental 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. Specifically, we are not ruling on whether Trust will have a zero inclusion ratio as a result of the allocations of Taxpayer 1's and Taxpayer 2's exemption as described herein.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) 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 taxpayers 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,

Melissa C. Liquerman

Melissa C. Liquerman
Chief, Branch 4
(Passthroughs & Special Industries)

Enclosures:
Copy for section 6110 purposes