

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

Number: **201628018**  
Release Date: 7/8/2016

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-138630-15

Date:  
March 15, 2016

### Legend:

|          |   |
|----------|---|
| Taxpayer | = |
| Trust    | = |
| Date 1   | = |
| Date 2   | = |

Dear :

This letter responds to your authorized representative's letter of October 23, 2015, requesting an extension of time under § 2642 of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to elect out of the deemed allocation of generation-skipping transfer (GST) exemption to transfers to a trust.

The facts, as represented, are as follows. On Date 1, a date after December 31, 2000, Taxpayer created Trust. Trust has GST tax potential. On Date 2, Taxpayer made a cash gift to Trust. Taxpayer retained tax professionals to prepare his Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, reporting the Date 2 gift to Trust. On the return the tax professionals, however, failed to elect out of the deemed allocation of GST exemption under § 2632(c)(5).

Taxpayer represents that, to date no taxable distributions, taxable terminations, or any other events have occurred with respect to Trust that would give rise to a GST tax liability.

Taxpayer requests an extension of time to elect out of the deemed allocation of GST exemption under § 2632(c) to the gift Taxpayer made to Trust on Date 2 and any future gifts made to Trust.

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 2602 provides that the amount of the tax imposed by § 2601 is the taxable amount multiplied by the applicable rate.

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. Under § 2642(a), the inclusion ratio with respect to any property transferred in a GST 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.

Section 2631(a) in effect on the date in question, provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount 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(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 basic exclusion amount under § 2010(c) for such calendar year.

Section 2632(c)(3)(A) provides that for purposes of § 2632(c), the term “indirect skip” means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust, as defined in § 2632(c)(3)(B).

Section 2632(c)(5)(A)(i) provides that an individual may elect to have § 2632(c) not apply to (I) an indirect skip or (II) any or all transfers made by such individual to a particular trust.

Section 2632(c)(5)(b)(i) provides that an election under § 2632(c)(5)(A)(i)(I) shall be deemed to be timely if filed on a timely filed gift tax return for the calendar year in which the transfer was made or deemed to have been made pursuant to § 2632(c)(4) or on such later date or dates as may be prescribed by the Secretary.

Section 2632(c)(5)(B)(ii) provides that an election under § 2632(c)(5)(A)(i)(II) may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

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 § 301.9100-1 through 301.9100-3.

Sections 301.9100 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 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)(v) provides, in part, 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 representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Taxpayer is granted an

extension of time of 120 days from the date of this letter to elect out of the deemed allocation of GST exemption under § 2632(c) for the gift to Trust on Date 2 and any future gifts made to Trust.

The elections should be made on Supplemental Forms 709 for the year in which the Date 2 gift occurred and filed with the Internal Revenue Service Center Cincinnati Service Center - Stop 82, Cincinnati, OH 45999, for association with the Form 709. You should attach a copy of this letter to the Supplemental Forms 709.

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

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 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,

Melissa C. Liquerman

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

Enclosures: Copy for § 6110 purposes