

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

Number: **201633015**

Release Date: 8/12/2016

Index Number: 2632.01-00, 9100.00-00

Person To Contact:

, ID No.

Telephone Number:

Re:

Refer Reply To:

CC:PSI:B04 – PLR-127451-15

Date: May 4, 2016

Grantor =  
Spouse =  
Executor =  
Trust 1 =

Trust 2 =

X =  
Y =  
Corporation =  
Accounting Firm =  
Law Firm =  
Year 1 =  
Year 2 =  
Year 3 =  
Year 4 =  
Year 5 =

Dear :

This letter responds to your authorized representative's letter of August 13, 2015, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100 of the Procedure and Administration Regulations to make an election under § 2632(c)(5) to opt out of the automatic allocation rules under § 2632(c) with respect to transfers to certain trusts.

### Facts

In Year 1, on a date after December 31, 2000, Grantor established an irrevocable grantor retained annuity trust, Trust 1. Grantor funded trust with x shares of Corporation (the Year 1 Transfer). Trust 1 has generation-skipping transfer (GST) tax potential.

Grantor's retained interest in Trust 1 terminated at the end of the annuity term on a date in Year 3. The estate tax inclusion period (ETIP) with respect to the Year 1 Transfer closed for GST tax purposes on the date in Year 3 that Grantor's retained interest in Trust 1 terminated.

In Year 2, on a date after December 31, 2000, Grantor established a second irrevocable grantor retained annuity trust, Trust 2. Grantor funded Trust 2 with y shares of Corporation (the Year 2 Transfer). Trust 2 has GST tax potential. Grantor's retained interest in Trust 2 terminated at the end of the annuity term on a date in Year 4. The ETIP with respect to the Year 2 Transfer closed for GST tax purposes on the date in Year 4 that Grantor's retained interest in Trust 2 terminated.

Grantor and Spouse retained Accounting Firm to prepare and file their Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, for Year 1 and Year 2. On timely filed Forms 709 for Year 1, Grantor and Spouse each elected to treat gifts made by each as made by both under § 2513 and each reported one-half of the Year 1 Transfer as a gift in Year 1. On timely filed Forms 709 for Year 2, Grantor and Spouse each elected to treat gifts made by each as made by both under § 2513 and each reported one-half of the Year 2 Transfer as a gift in Year 2. Although neither Grantor nor Spouse intended for GST exemption to be allocated to either the Year 1 Transfer or the Year 2 Transfer, Accounting Firm inadvertently failed to advise Grantor and Spouse of the rules under § 2632(c) regarding the automatic allocation of GST exemption and the ability to elect out of the automatic allocation of GST exemption by making an election under § 2632(c)(5) at the close of the ETIP. Therefore, for the property of Trust 1 and Trust 2, neither Grantor nor Spouse elected out of the automatic allocation of GST exemption on timely filed Year 3 and Year 4 Forms 709. Spouse died in Year 4 and Grantor died in Year 5. Law Firm, which was retained by the executor of Grantor's estate, discovered the error.

Executor of Grantor's estate requests an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to elect out of the automatic allocation rules in § 2632(c)(1) upon the close of the ETIPs with respect to the Year 1 Transfer to Trust 1 and the Year 2 Transfer to Trust 2 for which Grantor is treated as the transferor.

### 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 applicable rate as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

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 or her 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.

Section 2632(c)(4) provides that for purposes of § 2632(c), an indirect skip to which § 2642(f) applies shall be deemed to have been made only at the close of the ETIP. The fair market value of such transfer shall be the fair market value of the trust property at the close of the ETIP.

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

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(b)(1)(A) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an ETIP, its value at the time of the close of the ETIP.

Section 2642(f)(1) provides that 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 ETIP (and the value of such property shall be determined under § 2642(f)(2)). If such transfer is a direct skip, such skip shall be treated as occurring as of the close of the ETIP.

Section 2642(f)(3) provides that for purposes of § 2642(f), the term "estate tax inclusion period" means any period after the transfer described in § 2642(f)(1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under chapter 11 if he died.

Section 2513(a)(1) provides that a gift made by one spouse to any person other than his spouse shall be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. Section 2513(a)(1) only applies if both spouses have signified their consent to the application of this section in the case of all such gifts made during the calendar year by either while married to the other.

Section 2652(a)(1) provides, in part, that except as provided in § 2052(a) or § 2653(a), the term "transferor" means, in the case of any property subject to the tax imposed by chapter 12, the donor.

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 shall be so treated for purposes of chapter 13. Under § 26.2652-1(a)(4), 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 2642(g)(1)(A) provides, generally, 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 § 2642(g)(1), which was enacted into law on June 7, 2001.

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 Internal Revenue 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). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. 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.

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)(1)(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 upon the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Executor of Grantor's estate is granted an extension of time of 120 days from the date of this letter to file supplemental Forms 709 to elect, under § 2632(c)(5), out of the automatic allocation rules of § 2632(c)(1) for the Year 1 Transfer to Trust 1 and the Year 2 Transfer to Trust 2 for which spouse is treated as the transferor.

Executor should make the election on supplemental Forms 709 filed for Year 3 and Year 4 and file these forms with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the Forms 709. A copy is enclosed for this purpose.

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.

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.

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 yours,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: Karlene Lesho  
Karlene Lesho  
Senior Technician Reviewer  
Branch 4  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure

Copy for section 6110 purposes