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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

In Re: Ruling Request

Refer Reply To:  
CC:PSI:B04  
PLR-113996-16

Date:  
May 23, 2016

Legend:

Taxpayer	=
Trust	=
Year 1	=
Year 2	=

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

This letter responds to your personal representative's letter of April 27, 2016, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make the election out of the automatic allocation of generation-skipping transfer (GST) exemption under § 2632(c)(5)(A)(i)(II).

The facts submitted and the representations made are as follows. In Year 1, on a date after December 31, 2000, Taxpayer established and made a transfer to an irrevocable trust (Trust). Trust has GST tax potential.

Taxpayer retained a tax professional to prepare her Year 1 Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, to report the transfer to Trust. In preparing this form, the tax professional elected out of the automatic allocation of GST exemption to the transfer to Trust under § 2632(c)(5)(A)(i)(II).

In Year 2, Taxpayer made two transfers to Trust. Taxpayer retained the same tax professional to prepare her Year 2 Form 709 to report the transfers to Trust. In preparing this form, the tax professional inadvertently failed to elect out of the automatic allocation of GST exemption to the transfers to Trust under § 2632(c)(5)(A)(i)(II).

Taxpayer requests an extension of time under § 2642(g) and § 301.9100-3 to elect out of the automatic allocation of GST exemption to the Year 2 transfers to Trust under § 2632(c)(5)(A)(i)(II).

## 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 2632(c) is effective for transfers subject to chapter 11 or 12 made after December 31, 2000, and to estate tax inclusion periods (ETIPs) ending after December 31, 2000. See Pub. L. No. 107-16, § 561(a). 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)(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.

Section 2632(c)(5)(A)(i)(II) provides that an individual may elect to have § 2632(c)(1) not apply to any or all transfers made by such individual to a particular trust. Such an election may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

Section 26.2632-1(b)(2)(iii)(A) of the Generation-Skipping Transfer Tax Regulations provides, in relevant part, 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; (4) all future transfers made by the transferor to all trusts (whether or not in existence at the time of the election out); or (5) any combination of (1) through (4).

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.

Section 26.2632-1(b)(2)(iii)(C) provides that 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(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).

Section 2642(g)(1)(B) provides that in determining whether to grant relief, 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 shall be treated as if not expressly prescribed by statute. See Notice 2001-50, 2001-2 C.B. 189.

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 six 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 date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(b)(1)(B) and Notice 2001-50, a taxpayer 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.

Section 301.9100-3(b)(1)(v) provides 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 have been satisfied. Therefore, Taxpayer is granted an extension of time of 120 days from the date of this letter to elect out of the automatic allocation rules with respect to the transfers Taxpayer made to Trust in Year 2.

Taxpayer's election should be made on a supplemental Form 709 for Year 2. The supplemental Form 709 should be filed with the Internal Revenue 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 the 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.

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,

Karlene M. Lesho

Karlene M. Lesho  
Senior Technician Reviewer, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure:  
Copy of this letter for § 6110 purposes