

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201638020**

Release Date: 9/16/2016

Index Number: 2632.00-00, 9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-141453-15

Date:
June 07, 2016

Legend

Taxpayer =

Year =

Trust =

Tax Professionals =

Dear :

This letter responds to a letter dated December 4, 2015, and subsequent correspondence, from the authorized representative of Taxpayer's estate requesting an extension of time under § 2642(g) of the Internal Revenue Code (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) tax under § 2632(c)(5).

FACTS

In Year, on a date after December 31, 2000, Taxpayer established and funded Trust for the primary benefit of his son and daughter. Trust provides that during Taxpayer's lifetime the trustee shall make discretionary distributions of income and principal to Taxpayer's son and to or for the benefit of the descendants of any deceased child of Taxpayer, *per stirpes*. No distributions are to be made to Taxpayer's daughter during Taxpayer's lifetime. Upon Taxpayer's death, Trust is to be divided into equal shares, one for Taxpayer's son and one for Taxpayer's daughter.

After Taxpayer's death, Taxpayer's son may withdraw one-third (1/3) of his share of the Trust corpus when he reaches age 25, one-half (1/2) of the corpus of his share of the Trust corpus when he reaches age 30, and the remaining balance of his share of

the Trust corpus when he reaches age 35. If the son is age 35 or older when the Taxpayer dies, no more than one half ($\frac{1}{2}$) of the son's share of the Trust corpus can be distributed to him at Taxpayer's death. Son may withdraw the remainder of his share of the Trust corpus five years later. During the five-year interim period, the trustee may make discretionary distributions of income and principal to Taxpayer's son. If Taxpayer's son dies during this five-year period, his Trust share terminates and the trustee is to distribute the assets in the son's share of the Trust corpus to his issue, *per stirpes*.

Taxpayer's daughter is to receive discretionary distributions of income and principal from her Trust share during her lifetime. Upon the death of Taxpayer's daughter, her Trust share terminates and the trustee is to distribute the assets in daughter's Trust share to her issue, *per stirpes*.

Taxpayer engaged Tax Professionals to prepare his Year Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. Taxpayer reported the Year transfer to Trust as a gift on a timely filed Form 709. Taxpayer did not make the written election out of the automatic allocation of GST exemption under § 2632(c)(5)(A)(i).

Taxpayer, through the authorized representative of his estate, requests an extension of time under § 301.9100-3 to make an election out of automatic GST exemption with respect to the Year transfer to Trust pursuant to § 2632(c)(5)(A)(i).

LAW AND ANALYSIS

Section 2601 imposes a tax on every generation-skipping transfer (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 GST tax is the taxable amount multiplied by the "applicable rate." Section 2641(a) defines the term "applicable rate" as the product of the maximum Federal estate tax rate, and the inclusion ratio with respect to the transfer.

Section 2642(a)(1) provides that for purposes of chapter 13, the inclusion ratio with respect to any property transferred in a GST is generally defined as the excess (if any) of 1 over the "applicable fraction." The term "applicable fraction," as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of the GST exemption 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) 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 an individual's GST exemption may be allocated 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 return is required to be filed.

Section 2632(c) is effective for transfers subject to chapter 11 or 12 made 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)(3)(B) provides that the term "GST trust" means a trust that could have a generation-skipping transfer with respect to the transferor unless the trust is described in § 2632(c)(3)(B)(i) through (vi).

Section 2632(c)(5)(A)(i)(I) provides that an individual may elect to have § 2632(c)(1) not apply to an indirect skip. Such an election shall be deemed to be timely if made on a timely filed gift tax return for the calendar year in which the transfer was made.

Section 26.2632-1(b)(2)(iii)(A)(2) 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 one or more (or all) current-year transfers made by the transferor to a specified trust or trusts.

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. 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(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 Year transfer to Trust.

Taxpayer, through the personal representative of Taxpayer's estate, should make the allocation on a supplemental Form 709 for Year and file the form with the Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, Ohio 45999. Attach a copy of this letter to the 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) of the Code 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 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representative.

Sincerely,

Leslie H. Finlow

Leslie H. Finlow

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

Enclosures (2)

Copy for § 6110 purposes
Copy of this letter

cc: