

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
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PLR-110362-16
Date:
August 15, 2016

LEGEND

| | |
|-----------------|---|
| Donor | = |
| Date 1 | = |
| Trust 1 | = |
| Son | = |
| Daughter-in-law | = |
| Enrolled Agent | = |

Dear :

This letter responds to the letter dated March 26, 2016, submitted by your authorized representative, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate generation-skipping transfer (GST) exemption to transfers to a trust.

FACTS

The facts and representations submitted are as follows.

On Date 1 (a date after December 31, 2000), Donor created an irrevocable trust, Trust, for the benefit of Son, Daughter-in-law and their living issue. Trust has GST potential. Also on Date 1, Donor transferred two undivided interests in the same real property to Trust. Enrolled Agent prepared and timely filed Donor's Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, reporting the transfers to Trust. However, Enrolled Agent improperly reported the gifts on Part 1 (Gifts Subject Only to Gift Tax) of Schedule A of the Form 709, rather than on Part 3 (Indirect Skips). Accordingly, Enrolled Agent failed to allocate Donor's GST exemption to the gifts.

Donor requests an extension of time to make an election under § 2642(g)(1) to allocate GST exemption to the transfers to Trust, effective as of the date of the transfers 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 one 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, and the denominator of which is the value of the property transferred to the trust.

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)(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 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).

Section 301.9100-3(a) provides, in part, that 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 the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Donor is granted an extension of time of 120 days from the date of this letter to allocate her available GST exemption to the transfers to Trust. The allocations will be effective as of the date of the transfers, and the values of the transfers, as determined for federal gift tax purposes, will be used in determining the amount of Donor's GST exemption to be allocated to the transfers.

This allocation should be made on a supplemental Form 709 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 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) 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 your authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: Lorraine Gardner
Lorraine E. Gardner
Senior Counsel, Branch 4
(Passthroughs & Special Industries)

Enclosures (2)
Copy of the letter
Copy for § 6110 purposes

cc: