

Internal Revenue Service

Number: **201724008**

Release Date: 6/16/2017

Index Number: 9100.00-00, 2632.00-00,
2642.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-127988-16

Date:

March 02, 2017

Re:

Legend

Donor

Son

Date

Year

Trust

Asset

Law Firm

Attorney

Dear :

This letter responds to your authorized representative's letter dated August 30, 2016, and subsequent correspondence, 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 allocate Donor's generation-skipping transfer (GST) exemption to Trust.

The facts and representations submitted are summarized as follows:

On Date, a date before January 1, 2001, Donor created Trust for the primary benefit of his grandchildren, the children of Son. On Date, Donor transferred Asset to Trust.

Donor hired Law Firm to prepare his Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return for Year. A paralegal of Law Firm prepared

the return and Attorney reviewed the return. The paralegal did not allocate GST exemption to this transfer.

You have requested an extension of time under § 2642(g) and § 301.9100-3 to allocate Donor's GST exemption to Trust, based on the gift tax value of Asset as of the date of transfer to Trust.

LAW AND ANALYSIS

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer 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), as in effect for Year, provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption 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 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 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer 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 (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, reduced by the sum of any federal estate tax or state death tax actually recovered from the trust attributable to such property, and any charitable deduction allowed under § 2055 or 2522 with respect to such property.

Section 2642(b)(1), as in effect for Year, provides that 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) or is deemed to be made under § 2632(b)(1), the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12, and such allocation shall be effective on and after the date of such transfer.

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 § 2642(g).

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, 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 under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute. See Notice 2001-50, 2001-2 C.B. 189.

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 is 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) under the provisions of § 301.9100-3.

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). 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 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. Therefore, Donor is granted an extension of time of 120 days from the date of this letter to allocate his available GST exemption to the Year transfer to Trust. The allocations will be effective as of the respective date of the transfer and the value of the transfer as determined for federal gift tax purposes will be used in determining the amount of GST exemption to be allocated to Trust.

The allocation should be made on a supplemental Form 709 for Year. The Form 709 should be 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. A copy is enclosed for this purpose.

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

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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 requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
Passthroughs and Special Industries

By: Leslie H. Finlow
Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes
Copy of this letter