

Internal Revenue Service

Number: **201743004**
Release Date: 10/27/2017

Index Number: 2632.00-00, 2632.02-00,
2642.00-00, 9100.00-00

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:04
PLR-102874-17

Date:
July 03, 2017

LEGEND

Taxpayer =
Spouse =
Trust A =
Trust B =
Family Members =

Date 1 =
Date 2 =
Year 1 =
Year 2 through Year 9 =
Year 10 =
Year 11 =
Year 12 =
Year 13 =
State Statute =

Dear _____ :

This letter responds to your representative's letter dated January 9, 2017, 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 elections under § 2632(c)(5) to elect out of the automatic allocation of generation-skipping transfer (GST) exemption.

FACTS

On Date 1, a date preceding January 1, 2001, Taxpayer created Trust A for the benefit of his descendants and Family Members. Trust A has GST tax potential. Taxpayer made an annual transfer to Trust A and its successor trust in each year from Year 1 through Year 13. Year 1 and the succeeding years are years after December 31, 2000.

In reporting the transfers, Taxpayer and Spouse elected to treat the gifts as made one-half by each pursuant to § 2513 of the Code. The gifts were reported on timely filed Form 709, United States Gift (and Generation-Skipping Transfer) Tax Returns.

Year 1 and Year 10

Taxpayer's returns filed for Year 1 and Year 10 include election out statements providing that Taxpayer is electing out of the automatic allocation of GST exemption with respect to the gifts to Trust A reported in those returns.

Year 2 through Year 9

However, the returns filed for Year 2 through Year 9 do not include election out statements to avoid allocation of GST exemption with respect to the transfers to Trust A reported therein.

On Date 2, in Year 11, Taxpayer created Trust B for the benefit of his issue. Trust B has GST tax potential. On the same date, the trustee of Trust A exercised the power accorded under State Statute to transfer the Trust A principal to Trust B, and the Trust A principal thereupon became the principal of Trust B.

Year 11 through Year 13

Taxpayer made an annual transfer to Trust B in each of Year 11, Year 12, and Year 13. Again, in reporting the transfers, Taxpayer and Spouse elected to treat the gifts as made one-half by each pursuant to § 2513 of the Code. Each gift was reported on a timely filed Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. However, these returns did not include an election out statement making an affirmative election to avoid allocation of the GST exemption to the transfers to Trust B reported therein.

Ruling requested

Taxpayer requests an extension of time under § 301.9100-3 to make elections under § 2632(c)(5)(A)(i)(II) to have the automatic allocation rules not apply to the transfers made

to Trust A and Trust B (collectively, the Trust) in Year 1 through Year 13, as described above.

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 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 for Year 1 through Year 3 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(a) provides for Year 4 through Year 13 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(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 GST with respect to the transferor unless the trust is described in § 2632(c)(3)(B)(i) through (vi).

Section 2632(c)(5)(A) provides that an individual may elect to have § 2632(c)(1) not apply to an indirect skip, or any or all transfers made by such individual to a particular trust. Section 2632(c)(5)(B)(ii) provides that 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)(i) of the Generation-Skipping Transfer Tax Regulations provides, in part, that, in the case of an indirect skip made after December 31, 2000, the transferor's unused GST exemption is automatically allocated to the property transferred (but not in excess of the fair market value of the property on the date of the transfer). The automatic allocation pursuant to § 26.2632-1(b)(2)(i) is effective whether or not a Form 709 is filed reporting the transfer, and is effective as of the date of the transfer to which it relates. An automatic allocation is irrevocable after the due date of the Form 709 for the calendar year in which the transfer is made.

Section 26.2632-1(b)(2)(ii) provides, in part, that the transferor may prevent the automatic allocation of GST exemption with regard to an indirect skip by making an election, as provided in § 26.2632-1(b)(2)(iii).

Section 26.2632-1(b)(2)(iii)(A)(2) 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. Section 26.2632-1(b)(2)(iii)(C) provides, in relevant part, that 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 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 (b)(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.

Notice 2001-50 provides that taxpayers may seek an extension of time to make an

allocation described in § 2642(b)(1) or (b)(2) or described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

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.

We conclude that Taxpayer's returns filed for Year 1 and Year 10 include effective elections out of the automatic allocation of GST exemption with respect to the gifts reported therein as made to the Trust.

Further, 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 make elections under § 2632(c)(5)(A) that the automatic allocation rules do not apply to the transfers to the Trust made in Year 2 through Year 9 and in Year 11 through Year 13. The elections will be effective as of the dates of the transfers. Taxpayer should make each election on an original Form 709 for the respective Year filed 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,

Associate Chief Counsel
(Passthroughs and Special Industries)

Lorraine E. Gardner

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:
Copy of letter for section 6110 purposes

cc: