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Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CCS:PSI:4

PLR-111387-17

Date:

September 28, 2017

Legend

Husband =

Wife =

Trust 1 =

Trust 2 =

Trust 3 =

Accountant =

Attorney =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

<u>m</u>	=
<u>n</u>	=
<u>o</u>	=
<u>p</u>	=
<u>q</u>	=
Account	
Partnership	=
Corporation 1	=
Corporation 2	=
Corporation 3	=
Corporation 4	=
Corporation 5	=
Corporation 6	=
Corporation 7	=
Insurance Policy 1	=
Insurance Policy 2	=

Dear _____ :

This letter responds to your authorized representative's letter dated March 30, 2017, 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 Husband's generation-skipping transfer (GST) exemption to certain transfers to Trusts 1 through 3.

FACTS

The facts and representations submitted are as follows:

On Date 1, a date after December 31, 2000, Husband established Trust 1, an irrevocable trust for the benefit of the lineal descendants of Husband and Wife. Although Trust 1 has GST tax potential, a portion of Trust 1 has the potential to be included in the gross estate of a non-skip person (other than Husband or Wife) if such person died immediately after the transfer.

In Year 1, Husband transferred to Trust 1 ownership interests in Corporation 1 valued at \$a and Corporation 2 valued at \$b. In Year 3, Husband transferred to Trust 1 an ownership interest in Partnership valued at \$c, Insurance Policy 1 valued at \$d, and cash in the amount of \$e. In Year 5, Husband transferred to Trust 1 cash in the amount of \$f.

On Date 2, a date after December 31, 2000, Husband established Trust 2, an irrevocable insurance trust for the primary benefit of Wife, Husband's children, and the lineal descendants Husband's children. Although Trust 2 has GST tax potential, a

portion of Trust 2 has the potential to be included in the gross estate of a non-skip person (other than Husband) if such person died immediately after the transfer.

In Year 2, Husband transferred to Trust 2 Insurance Policy 2 valued at \$g and cash in the amount of \$h. In Year 3, Year 4, and Year 5, Husband transferred to Trust 2 cash in the amounts of \$i, \$j, and \$k, respectively.

On Date 3, a date after December 31, 2000, Husband established Trust 3, an irrevocable insurance trust for the primary benefit of Wife and Husband's children. Although Trust 3 has GST tax potential, a portion of Trust 3 has the potential to be included in the gross estate of a non-skip person (other than the Husband) if such person died immediately after the transfer.

In Year 4, Husband transferred to Trust 3 Account (containing various marketable securities) valued at \$l and ownership interests in Corporation 3, Corporation 4, Corporation 5, Corporation 6, and Corporation 7 valued at \$m, \$n, \$o, \$p, and \$q, respectively.

During Years 1 through 5, Husband and Wife retained Attorney for estate planning advice and preparation of the governing instruments of several trusts, including Trust 1, Trust 2, and Trust 3. Attorney coordinated this estate planning with Accountant, who Husband and Wife retained to prepare any necessary Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns. During the planning and preparation of the governing instruments of Trust 1, Trust 2, and Trust 3, Accountant was advised of the intent of Husband and Wife to (a) elect under § 2513 to treat gifts made by each as made one-half by both, to the extent the gifts are eligible for split gift treatment, and (b) allocate GST exemption to transfers made or deemed to be made by each of Husband and Wife to Trust 1, Trust 2, and Trust 3.

Accountant prepared Year 1 Forms 709 for Husband and Wife on which Husband and Wife each elected to treat gifts made by each as made by both under § 2513 and reported one-half of the Year 1 transfers to Trust 1 as a gift in Year 1. However, in preparing the Year 1 Forms 709, Accountant failed to allocate GST exemption to the respective amount of Year 1 transfers to Trust 1 made or deemed to be made by each of Husband and Wife. For Years 2 through 5, Accountant failed to prepare Forms 709, for both Husband and Wife, to report the transfers to Trust 1, Trust 2, and Trust 3, and therefore failed to allocate GST exemption to the transfers.

It is represented that at all relevant times Husband had sufficient GST exemption to allocate to the transfers he made or is deemed to have made to Trust 1, Trust 2, and Trust 3 in Years 1 through 5. It is further represented that the terms of Trust 2 and Trust 3 preclude split gift treatment under § 2513.

Husband requests an extension of time to allocate GST exemption to the transfers he made or is deemed to have made to Trust 1, Trust 2, and Trust 3 in Years 1 through 5.

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 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.

Under § 2642(a)(1), 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 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, 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 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, is irrevocable.

Section 26.2632-1(b)(4)(i) of the Generation Skipping Transfer Tax Regulations provides, in part, 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.

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 to a GST Trust.

Section 2632(c)(3)(B)(iv) provides that the term “GST trust” means a trust that could have a GST with respect to the transferor unless the trust is a trust any portion of

which would be included in the gross estate of a non-skip person (other than the transferor) if such person died immediately after the transfer. The value of transferred property shall not be considered to be includible in the gross estate of a non-skip person or subject to a right of withdrawal by reason of such person holding a right to withdraw so much of such property as does not exceed the amount referred to in § 2503(b) with respect to any transferor.

Section 2642(b) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of § 2632(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. If property is transferred as a result of the death of the transferor, the value of such property for purposes of § 2632(a) shall be its value as finally determined for purposes of chapter 11, and such allocation shall be effective on and after the due date of the death of the transferor.

Section 2513(a)(1) provides that a gift made by one spouse to any other person other than his spouse shall be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. Section 2513(a)(1) only applies if both spouses have signified their consent to the application of this section in the case of all such gifts made during the calendar year by either while married to the other.

Section 2652(a)(1) provides, in part, that except as provided in § 2652(a) or § 2653(a), the term “transferor” means, in the case of any property subject to the tax imposed by chapter 12, the donor. Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of chapter 13. Under § 26.2652-1(a)(4), in the case of a transfer with respect to which the donor’s spouse makes an election under § 2513 to treat the gift as made one-half by the spouse, the electing spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513. The donor is treated as the transferor of one-half of the value of the entire property.

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). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A).

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.

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 301.9100-1(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 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue 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 due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. 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) 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 the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Husband is granted an extension of time of 120 days from the date of this letter to allocate GST exemption to transfers to Trust 1 in Year 1, Year 3, and Year 5, to the extent he is considered the transferor under § 26.2652-1(a)(4). Further, Husband is granted an extension of time of 120 days from the date of this letter to allocate GST exemption to the transfers to Trust 2 in Years 2 through 5, and to the transfers to Trust 3 in Year 4. The allocations will be effective on the respective dates of the transfers and are based on the value of the transferred property as finally determined for purposes of chapter 12.

With respect to the Year 1 transfer to Trust 1, Husband should allocate his GST exemption on a supplemental Form 709 for Year 1. With respect to the transfers in Years 2 through 5 to Trust 2 and Trust 3, Husband should allocate his GST exemption on a Form 709 for each of Years 2 through 5. All Forms 709 should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each Form 709. A copy of this letter is enclosed for this purpose.

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.

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

Enclosures (2)

Copy for § 6110 purposes
Copy of this letter