

Internal Revenue Service

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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:

CCS:PSI:4

PLR-101011-18

Date:

May 21, 2018

Legend

Taxpayers =

Trust =

Accounting Firm =

Year 1 =

Year 2 =

Dear :

This letter responds to your authorized representative's letter dated December 14, 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 Taxpayers' respective generation-skipping transfer (GST) exemptions to their respective Year 2 transfers to Trust.

FACTS

The facts and representations submitted are as follows:

In Year 1, a year ending on or before December 31, 2000, Taxpayers established Trust, an irrevocable trust, for the primary benefit of their children and issue. Taxpayers funded Trust with community property interests. In Year 2, also a year ending on or before December 31, 2000, Taxpayers transferred other community property interests to Trust. Trust has GST potential.

In Year 2, Taxpayers retained Accounting Firm to prepare Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns. Accounting Firm failed to prepare Year 2 Forms 709 to report Taxpayers' respective Year 2 transfers to Trust and, therefore, failed to allocate GST exemption to these transfers.

It is represented that Taxpayers each had sufficient GST exemption to allocate to his or her respective Year 2 transfer to Trust 1.

RULING REQUESTED

Taxpayers request the Commissioner to grant an extension of time under § 2642(g)(1) of the Code and Treas. Reg. §§ 301.9100.1 and 301.9100.3 to allocate the Taxpayers' respective GST exemption with respect to their Year 2 transfers made to Trust so that (1) the allocations will be effective as of the date of the Year 2 transfers; and (2) the amount of the GST exemption allocated to Trust and the inclusion ratio of Trust will be determined based on the value of the transfers to Trust as determined for federal gift tax purposes.

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 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 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, Taxpayers are granted an extension of time of 120 days from the date of this letter to allocate their respective GST exemptions to their respective Year 2 transfers to Trust. 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.

Taxpayers should allocate their respective GST exemptions on Forms 709 for Year 2. The 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)

Lorraine E. Gardner

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

Enclosures (2)

Copy for § 6110 purposes
Copy of this letter