

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-100598-18

Date:

June 18, 2018

### LEGEND

Settlor =  
Spouse =  
Accounting Firm =  
Trust =

Foundation =  
Date =  
Year =  
x =

Dear :

This letter responds to your authorized representative's letter dated November 15, 2017, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to allocate generation-skipping transfer (GST) exemption to a transfer to a trust.

### FACTS

The facts and representations submitted are summarized as follows:

Settlor executed and funded an irrevocable charitable lead unitrust (Trust) on Date, in Year, for the benefit of Foundation and Settlor's grandchildren. No additional gifts have been made to Trust.

Article II, section (a) of Trust provides, in relevant part, that commencing on the date Trust is funded, and for a period of 20 years thereafter (Termination Date), the trustees shall pay to Foundation, a not-for-profit corporation, during each taxable year of the trust, a unitrust amount equal to x percent of the net fair market value of the assets of the trust valued as of the first business day of each taxable year of the trust. Article II, section (b) provides that the unitrust amount shall be paid annually at the end of each taxable year of the trust.

Under Article II, section (f), if Foundation ceases to be an organization described in §§ 170(b)(1)(A), 170(c), 2055(a) and 2522(a), the trustee shall instead make distributions to any one or more organizations described in §§ 170(b)(1)(A), 170(c), 2055(a) and 2522(a) as trustee shall select, whose purposes are most similar to Foundation.

Article II, section (j) provides that upon the Termination Date, the trust shall terminate and the remaining trust estate, after payment of the final unitrust amount, shall be divided and distributed to Settlor's grandchildren in equal shares.

After Settlor created and funded Trust, Settlor engaged Accounting Firm to prepare the Year Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return for Settlor and Spouse. On his and her respective timely-filed Forms 709, Settlor and Spouse signified their consent to treat their gifts in Year as having been made one-half by each spouse under § 2513. The Forms 709, however, did not allocate any of Settlor's or Spouse's GST exemption to Trust. The error was discovered when Settlor's current tax advisor reviewed the trust agreement and the Year returns.

Settlor, Spouse and Accounting Firm each signed affidavits stating that Settlor and Spouse intended to allocate their available GST exemption to Trust. Settlor and Spouse relied on Accounting Firm to prepare the Forms 709 and to allocate GST exemption to Trust.

It is represented that at the time of the Year transfer, Settlor and Spouse each had exemption available to allocate to Trust.

You have requested an extension of time under § 2642(g)(1) and § 301.9100-3 to allow Settlor and Spouse to allocate their respective GST exemption to the Year transfer to Trust.

## LAW AND ANALYSIS

Section 2513(a)(1) provides that a gift made by one spouse to any person other than the donor's spouse is considered for purposes of the gift tax as made one-half by the donor and one-half by the donor's 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 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 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 generation-skipping transfer is generally defined as the excess 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 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.

Section 2642(b)(1)(A) provides, in part, that, except as provided in § 2642(f), 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) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)).

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 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.

Section 2632(a) 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 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 regulation shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

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.

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 and transfers at death, are to be treated as if not expressly prescribed by statute and taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) 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 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).

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 §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Settlor and Spouse are granted an extension of time of 120 days from the date of this letter to allocate Settlor's and Spouse's available GST exemption to their respective share of the Year transfer to Trust. The allocations will be effective as of the date of the transfer to Trust and the value of the transfer to Trust as determined for federal estate tax purposes will be used in determining the amount of Settlor's and Spouse's GST exemption to be allocated to Trust.

This allocation should be made on supplemental Forms 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 Forms 709.

A copy of this letter should be attached to any gift, estate, or generation-skipping transfer tax returns that you may file relating to these matters.

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.

Except as specifically ruled herein, we do not express or imply any opinion concerning the tax consequences of the transaction or any subsequent transaction regarding Trust under the cited provisions or under any other provisions of the Code.

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 & Special Industries

*Leslie H. Finlow*

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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

cc: