

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

Number: **201840002**

Release Date: 10/5/2018

Index Number: 2642.00-00, 9100.00-00

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact: \_\_\_\_\_, ID No \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Refer Reply To:  
CC:PSI:B04  
PLR-102813-18

Date:  
July 02, 2018

### Legend

Grantor	=
Trust 1	=
Trust 2	=
Accounting Firm	=
Law Firm	=
Date	=
Year 1	=
Year 2	=

Dear \_\_\_\_\_ :

This letter responds to your authorized representative's letter dated January 12, 2018 and subsequent correspondence, requesting an extension of time under § 2642(g)(1) and § 301.9100-3 of the Procedure and Administration Regulations to allocate Grantor's GST exemption to two trusts.

The facts and representations submitted are summarized as follows:

Grantor executed and funded two irrevocable Trusts (Trust 1 and Trust 2) on Date 1. Trust 1 and Trust 2 were created for the benefit Grantor's descendants

Accounting Firm prepared the Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return for Year 1 reporting the transfers to Trust 1 and Trust 2. However, Grantor failed to allocate any of Grantor's GST exemption to the Year1 transfers to Trust 1 and Trust 2. The error was discovered in Year 2 when a newly hired attorney was added to Grantor's advisory team at Law Firm and the attorney discovered that no GST

exemption had been allocated to the Year 1 transfers to Trust and Trust 2 on Grantor's Year 1 Form 709. Grantor has sufficient GST exemption in Year 1 to allocate to the transfers to Trust 1 and Trust.

## LAW AND ANALYSIS

Section 2601 imposes a tax on every generation-skipping transfer (GST), which is defined under § 2611 as a taxable distribution, a taxable termination, and a direct skip.

Section 2602 provides that the amount of the GST tax is determined by multiplying the taxable amount by the applicable rate.

Section 2641(a) defines the 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 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 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 2632(a)(2) provides that the manner in which allocations are to be made shall be prescribed by forms or regulations issued by the Secretary.

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 § 301.9100-3 have been satisfied. Therefore, Grantor is granted an extension of time of 120 days from the date of this letter to allocate Grantor's available GST exemption to the Year transfers to Trust 1 and Trust 2. The allocations will be effective as of the respective date of the transfers to Trust 1 Trust 2, and the value of the transfers to Trusts as determined for federal estate tax purposes will be used in determining the amount of Grantor's GST exemption to be allocated to Trust 1 and Trust 2.

This allocation should be made on supplemental Form 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.

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

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 nor imply any opinion concerning the tax consequences of the transaction or any subsequent transaction regarding Trust 1 or Trust 2 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 yours,

*Lorraine Gardner*

By: \_\_\_\_\_  
Lorraine Gardner  
Senior Counsel, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes  
Copy of this letter