

Internal Revenue Service

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[Third Party Communication:
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Person To Contact: _____, ID No.

Telephone Number: _____

Refer Reply To:
CC:PSI:B04
PLR-113395-21

Date:
December 03, 2021

Re:

Legend

- Grantor =
- Trust =
- Date =
- Year 1 =
- Son =
- x =
- Accounting Firm =
- Attorney =
- Year 2 =
- Year 3 =

Dear _____ :

This letter responds to your representative’s letter dated June 23, 2021, requesting an extension of time under § 2642(g) of the Internal Revenue Code and Treas. Reg. § 301.9100-3 of the Procedure and Administration Regulations to allocate Grantor’s GST exemption to the Year 1 transfer to Trust.

The facts and representations are as follows. On Date, Grantor created an irrevocable trust, Trust, for the benefit of Grantor’s son, Son. Date is a date prior to December 31, 2000. Grantor contributed \$x to Trust. Trust provides that, during the lifetime of Son, the trustee has the discretion to distribute income and principal for the benefit of Son and his descendants for their respective health, education, maintenance, and support. Article I, section 2(d) of Trust provides that Grantor intends that Trust (and trusts created under the trust agreement) have an inclusion ratio of zero and that no transfers to or distributions from Trust (and trusts created under the trust agreement) shall be subject to federal tax on generation-skipping transfers.

Grantor engaged Accounting Firm to prepare Grantor's federal and state income tax returns for Year 1. In a letter from Accounting Firm to Grantor, the firm's representative stated that it was the firm's understanding that Attorney had also prepared the Form 709, United States Gift (and Generation-Skipping Transfer Tax) Return for Year 1. In fact, Attorney failed to advise Grantor that it was necessary to file a Year 1 gift tax return to allocate Grantor's GST exemption to the Year 1 transfer to Trust, and furthermore Attorney did not prepare or file a Form 709 for Year 1.

In Year 2 and Year 3, Grantor transferred certain assets and cash, respectively, to Trust. Grantor filed timely Forms 709 and allocated the smallest amount of GST exemption necessary to produce an inclusion ratio for Trust that was closest to, or if possible, equal to zero.

LAW AND ANALYSIS

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

Section 2602 provides that the amount of GST tax is the taxable amount, multiplied by the applicable rate. Section 2641(a) provides that the term "applicable rate" means 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 transfer is the excess (if any) of 1 over the applicable fraction determined for the trust from which such transfer is made, or in the case of a direct skip, the applicable fraction determined for such skip. Section 2642(a)(2) provides that the applicable fraction is a fraction – (A) the numerator of which is the amount of the GST exemption allocated to the trust (or in the case of a direct skip, allocated to the property transferred in such 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), as in effect for Year 1, provides 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(b) provides that any allocation under § 2631(a), once made, is irrevocable.

Section 2632(a) provides that any allocation by an individual of his 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 26.2632-1(b)(4)(i) 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 2642(b)(1)(A) provides, in part, that if the allocation of 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)), and such allocation is effective on and after the date of such transfer.

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 regulations shall include procedures for requesting comparable relief for 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 under § 2642(g)(1), 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 (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides, in part, 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) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

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 301.9100-2 provides an automatic extension of time for making certain elections. 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(g)(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.

Section 301.9100-3(a) provides, in part, that requests for relief subject to § 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 to advise the taxpayer to make, the election.

Based upon the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Grantor is granted an extension of time of 120 days from the date of this letter to make the election to allocate his GST exemption to the Year 1 transfer to Trust. The allocation will be effective as of the date of the Year 1 transfer to Trust and the value of the transfer for gift tax purposes will be used in determining the amount of Grantor's GST exemption to be allocated to Trust. The allocation should be made on a Form 709 and filed with the Internal Revenue Service at the following address: Department of the Treasury, Internal Revenue Service, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. A copy of this letter should be attached to the Forms 709.

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 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: Leslie H. Finlow
Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure
Copy for § 6110 purposes

cc: