

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.
Telephone Number:

In Re:

Refer Reply To:
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PLR-113643-21
Date:
December 13, 2021

Legend

Date 1 =

Year =

Date 2 =

Donor =

Trust =

X =

LP =

Dear :

This letter responds to your authorized representative’s letter dated June 14, 2021, requesting a ruling that the automatic allocation rules under § 2632(c) of the Internal Revenue Code (Code) apply to the transfers made by Settlor and Spouse in Year.

FACTS

The facts submitted and the representations made are as follows:

On Date 1, in Year (a date after December 31, 2000), Donor established an irrevocable trust, Trust, for the benefit of her descendants. During Donor’s lifetime, the trustee may distribute the income and principal of Trust to Donor’s descendants in the trustee’s sole discretion to provide for health, education, maintenance and support. Upon Donor’s death, Trust divides into separate shares each benefitting one of Donor’s children and his or her descendants. During each child’s life, the trustee may distribute

principal and income in his sole discretion to such child and his or her descendants to provide for health, education, maintenance and support.

Each child may at his or her death appoint the remainder of his or her separate trust to any person or entity other than the child's estate, the child's creditors or the creditors of the child's estate. Additionally, each child may also appoint to the creditors of his or her estate an amount of the trust having a value equal to the greatest dollar amount which produces the lowest sum of (i) wealth transfer taxes payable with respect to such child's estate, and (ii) generation-skipping transfer tax payable with respect to Trust. Any unappointed assets of a child's separate trust will continue in trust for the benefit of his or her descendants.

On Date 2, in Year, Donor transferred x non-voting partnership units in LP, a limited partnership, to Trust. Donor reported the Date 2 transfers to Trust on her Year Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. However, the Date 2 transfer to Trust was incorrectly reported on Form 709, Schedule A, Part 1- Gifts Subject Only to Gift Tax instead of on Schedule A, Part 3-Indirect Skips. Furthermore, the automatic allocation of the GST exemption was not reported on Schedule D, Computation of Generation-Skipping Transfer Tax.

You request a ruling that Donor's Generation-Skipping Transfer (GST) tax exemption was automatically allocated to the Date 2 transfer to Trust under the automatic allocation rules of § 2632(c).

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.

Section 2642(a) provides the method for determining the inclusion ratio.

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 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(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 the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust. Section 2632(c)(3)(B) provides, in relevant part, that the term "GST trust" means a trust that could have a generation-skipping transfer with respect to the transferor unless the trust falls within any of six enumerated exceptions.

Section 2632(c)(3)(B)(ii) provides that a trust is not a GST trust if the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons and who are living on the date of death of another person identified in the instrument (by name or by class) who is more than 10 years older than such individuals.

Section 2632(c)(3)(B)(iii) provides that a trust is not a GST trust if the trust instrument provides that, if one or more individuals who are non-skip persons die on or before a date or event described in clause (i) or (ii), more than 25 percent of the trust corpus either must be distributed to the estate or estates of one or more of such individuals or is subject to a general power of appointment exercisable by one or more of such individuals.

Section 26.2632-1(b)(2)(iii)(A) of the Generation-Skipping Transfer Tax Regulations provides that a transferor may prevent the automatic allocation of GST exemption (elect out) with respect to any transfer or transfers constituting an indirect skip made to a trust or to one or more separate shares that are treated as separate trusts under § 26.2654-1(a)(1).

Section 26.2632-1(b)(2)(iii)(B) provides that an election out of automatic allocation of GST exemption is made by attaching an election out statement to a timely filed Form 709.

In this case, more than 25 percent of the principal of Trust would be subject to a general power of appointment held by the children and exercisable by them upon their deaths if GST exemption is not allocated to more than 25 percent of Trust. Nevertheless, the general power of appointment contingent upon the inclusion ratio of the trust does not in this case prevent the trust from being a GST trust under § 2632(c)(3)(B). Accordingly, the terms of Trust satisfy the definition of a GST trust under § 2632(c)(3)(B) at the time of the Date 2 transfer to Trust.

Additionally, Donor's failure to correctly report the Date 2 transfers on her Year

Form 709 did not constitute an election out of the automatic allocation rules under § 26.2632-1(b)(2)(iii), because no election out statement was attached to Donor's Year Form 709. Therefore, Donor's Date 2 transfer to Trust satisfies the definition of an indirect skip under § 2632(c)(1). Accordingly, based upon the facts submitted and the representations made, we conclude that Donor's available GST exemption was automatically allocated to the Date 2 transfer to Trust.

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.

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.

Sincerely,

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

Enclosure:
Copy for § 6110 purposes

cc: