

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **202220009**

Release Date: 5/20/2022

Index Number: 2632.00-00, 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:4  
PLR-121549-21

Date:  
February 23, 2022

Re:

Legend

Attorney =  
Decedent =

X =  
Y =  
Trusts =

Z =  
Accountant =  
Date 1 =  
Date 2 =

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

This letter responds to your authorized representative's letter dated October 15, 2021, and subsequent correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to elect out of the generation-skipping transfer (GST) exemption automatic allocation rules under § 2632(b)(3).

The facts and representations submitted are as follows:

Upon the advice of Attorney, Decedent transferred assets valued at \$x to y irrevocable trusts (Trusts), one for the benefit of each of y grandchildren, and assets valued at \$x to each of Decedent's other z grandchildren in 2010. Trusts are skip persons, as defined in § 2613(a). Decedent did not intend to allocate GST exemption to the transfers to Trusts because the GST tax rate was zero in 2010.

Decedent timely filed a 2010 Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, to report the gifts. As a result of Attorney's ineffective communication, Accountant, who prepared the Form 709, was unaware that the gifts to y of Decedent's grandchildren were made in trust and incorrectly reported the gifts to Trusts as made directly to those y grandchildren. Accountant also failed to advise Decedent of the rules under § 2632(b) regarding the automatic allocation of GST exemption to direct skips and the ability to elect out of automatic allocation by making an election under § 2632(b)(3). Decedent, therefore, did not elect out of automatic allocation for the gifts to Trusts.

Decedent died on Date 1. Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, is due on extension on Date 2.

Decedent's estate requests an extension of time under § 301.9100-3 to elect out of automatic allocation of GST exemption under § 2632(b)(3) for Decedent's 2010 gifts to Trusts.

## 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 2612(c) provides that a direct skip is a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) provides that a skip person is – (1) a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor, or (2) a trust – (A) if all interests in such trust are held by skip persons, or (B) if – (i) there is no person holding an interest in such trust, and (ii) at no time after

such transfer may a distribution (including distributions on termination) be made from such trust to a non-skip person.

Section 2602 provides that the amount of GST 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)(1) provides that the inclusion ratio with respect to any property transferred in a GST is 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).

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual is 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 2632(a)(1) provides that any allocation by an individual of 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.

Under § 2632(b)(1), if an individual makes a direct skip transfer during life, any unused portion of such individual's GST exemption is automatically allocated to the property transferred to the extent necessary to make the inclusion ratio zero.

Section 2632(b)(3) provides that an individual may elect to have the automatic allocation rule of § 2632(b)(1) not apply to a transfer.

Section 26.2632-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provides, in part, that, if a direct skip occurs during the transferor's lifetime, the transferor's GST exemption not previously allocated (unused GST exemption) is automatically allocated to the transferred property (but not in excess of the fair market value of the property on the date of the transfer). The transferor may prevent the automatic allocation of GST exemption by describing on a timely-filed Form 709 the transfer and the extent to which the automatic allocation is not to apply. In addition, a timely filed Form 709 accompanied by payment of the GST tax is sufficient to prevent an automatic allocation of GST exemption with respect to the transferred property.

Section 26.2632-1(b)(1)(ii) provides, in part, that a Form 709 is timely filed if it is filed on or before the date required for reporting the transfer if it were a taxable gift (i.e., the date prescribed by § 6075(b), including any extensions to file actually granted (the due

date)). The automatic allocation of GST exemption (or the election to prevent the allocation, if made) is irrevocable after the due date. An automatic allocation of GST exemption is effective as of the date of the transfer to which it relates. Except as provided above, a Form 709 need not be filed to report an automatic allocation.

Section A of Title V of the Economic Growth and Tax Relief Reconciliation Act of 2001, P.L. 107-16, enacted § 2210 of the Code, which made chapter 13 (the GST tax) inapplicable to GSTs made in 2010. On December 17, 2010, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312 (124 Stat. 3296) (TRUIRJCA), became law, and § 301 retroactively reinstated the GST tax. However, § 302(c) of TRUIRJCA provides that the applicable rate for each GST occurring during 2010 is zero.

Notice 2011-66, 2011-35 I.R.B. 184, provides that the IRS will interpret the reporting of an *inter vivos* direct skip not in trust occurring in 2010 on a timely filed Form 709 as constituting the payment of GST tax (at the rate of zero percent) and, therefore, as an election out of the automatic allocation of GST exemption to that direct skip.

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 election under § 2632(b)(3).

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 that, under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are 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 (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).

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 the grant of relief will not prejudice the interests of the Government.

Under § 301.9100-3(b)(1)(v), 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 upon the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, you are granted an extension of time of 120 days from the date of this letter to elect out of the automatic allocation rules under § 2632(b)(3) with respect to Decedent's 2010 gifts to Trusts. The election should be made on an amended Form 709 for 2010 in accordance with the Instructions for Form 709. The amended Form 709 should be filed with the Internal Revenue Service Center at the following address: Internal Revenue Service Center, Attn: E&G, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. You should attach a copy of this letter to the amended Form 709.

The ruling contained in this letter is 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 ruling, 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 the taxpayer's authorized representatives.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: *Karlene M. Lesho*

Karlene M. Lesho  
Senior Technician Reviewer, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes

cc: