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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
March 28, 2023

RE:

Legend

Spouse =

Taxpayer =

Children =

Trust 1 =
Children's =
Trusts

Trust 2 =
Trust 3 =
Trust 4 =
Trust 5 =

Trust 6 =

Trust 7 =

Trust 8 =

Trust 9 =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Year 7 =
Year 8 =
Year 9 =
Year 10 =
Year 11 =
Firm =
Year 12 =

Dear :

This letter responds to your authorized representatives' letter dated October 3, 2022, 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 under § 2632(c)(5) of the generation-skipping transfer (GST) exemption automatic allocation rules with respect to certain transfers to trusts.

The facts and representations submitted are as follows:

On Date 1 in Year 1, a date after December 31, 2000, Spouse established and funded Trust 1, an irrevocable trust. Trust 1 provided for the payment of an annuity to Spouse for a term of years. Upon expiration of the term, Trust 1 provided for allocation of the remainder to separate trusts, one for the benefit of each of Spouse's Children and the child's descendants (Children's Trusts). Children's Trusts have GST potential. For GST tax purposes, the estate tax inclusion period (ETIP) closed on Date 1 of Year 3 with respect to Trust 1.

On Date 1 in Year 2, Spouse established and funded Trust 2, an irrevocable trust. Trust 2 provided for the payment of an annuity to Spouse for a term of years. Upon expiration of the term, the remainder of Trust 2 was distributed in equal shares to Children's Trusts. For GST tax purposes, the ETIP closed on Date 1 of Year 4 with respect to Trust 2.

On Date 1 of Year 3, Spouse established and funded Trust 3, an irrevocable trust. Trust 3 provided for the payment of an annuity to Spouse for a term of years. Upon expiration of the term, the remainder of Trust 3 was distributed in equal shares to Children's Trusts. For GST tax purposes, the ETIP closed on Date 1 of Year 5 with respect to Trust 3.

On Date 1 of Year 4, Spouse established and funded Trust 4, an irrevocable trust. Trust 4 provided for the payment of an annuity to Spouse for a term of years. Upon expiration of the term, the remainder of Trust 4 was distributed in equal shares to Children's Trusts. For GST tax purposes, the ETIP closed on Date 1 of Year 6 with respect to Trust 4.

On Date 2 of Year 5, Spouse established and funded Trust 5, an irrevocable trust. Trust 5 provided for the payment of an annuity to Spouse for a term of years. Upon expiration of the term, the remainder of Trust 5 was distributed in equal shares to Children's Trusts. For GST tax purposes, the ETIP closed on Date 2 of Year 7 with respect to Trust 5.

On Date 2 of Year 5, Spouse also established and funded Trust 6, an irrevocable trust. Trust 6 provided for the payment of an annuity to Spouse for a term of years. Upon expiration of the term, the remainder of Trust 6 was distributed in equal shares to Children's Trusts. For GST tax purposes, the ETIP closed on Date 2 of Year 10 with respect to Trust 6.

On Date 2 of Year 6, Spouse established and funded Trust 7, an irrevocable trust. Trust 7 provided for the payment of an annuity to Spouse for a term of years. Upon expiration of the term, the remainder of Trust 7 was distributed in equal shares to Children's Trusts. For GST tax purposes, the ETIP closed on Date 2 of Year 8 with respect to Trust 7.

On Date 3 of Year 8, Spouse established and funded Trust 8, an irrevocable trust. Trust 8 provided for the payment of an annuity to Spouse for a term of years. Upon expiration of the term, the remainder of Trust 8 was distributed in equal shares to Children's Trusts. For GST tax purposes, the ETIP closed on Date 3 of Year 10 with respect to Trust 8.

On Date 4 of Year 8, Spouse also made gifts to Children's Trusts.

On Date 5 of Year 9, Spouse established and funded Trust 9, an irrevocable trust. Trust 9 provided for the payment of an annuity to Spouse for a term of years. Upon expiration of the term, the remainder of Trust 9 was distributed in equal shares to Children's Trusts. For GST tax purposes, the ETIP closed on Date 4 of Year 11 with respect to Trust 9.

Taxpayer represents that, to date, no taxable distributions, taxable terminations, or any other events have occurred with respect to Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, and Trust 9 that would give rise to a GST tax liability. In addition, Taxpayer represents that no transfers other than those described above have been made to Children's Trusts.

Spouse and Taxpayer retained Firm to provide tax advice with respect to the creation and funding of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, and Children's Trusts and to prepare Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, for Years 1 through 11. On the Forms 709 for Years 1 through 11, Spouse and Taxpayer signified their consent to treat all of the gifts occurring in Years 1 through 11 as having been made one-half by each of them under § 2513. Spouse and Taxpayer did not intend for any portion of GST exemption to be applied to the transfers made to Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, and Children's Trusts. Firm, however, did not advise Spouse and Taxpayer of the rules under § 2632(c) regarding the automatic allocation of GST exemption and the ability to elect out of automatic allocation by making an election under § 2632(c)(5). As a result, Spouse and Taxpayer failed to elect out of the automatic allocation of GST exemption for the transfers to Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, Trust 9, and Children's Trusts. In Year 12, Firm discovered the failure to make an election under § 2632(c)(5) to elect out of the automatic allocation of GST exemption.

Taxpayer requests an extension of time under § 2642(g) and § 301.9100-3 to elect out of the automatic allocation of GST exemption under § 2632(c)(5)(A)(i)(I) for the transfers to Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, and Trust 9 and under § 2632(c)(5)(A)(i)(II) for the transfers to Children's Trusts.

Law and Analysis

Section 2513(a)(1) provides that a gift made by one spouse to any person other than his spouse shall be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. Under § 2513(a)(2), paragraph (a)(1) only applies if both spouses have signified their consent to the application of paragraph (a)(1) 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 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 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 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 their 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 2652(a)(1) provides, in part, that the term “transferor” means in the case of any property subject to the tax imposed by chapter 12, the donor.

Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of chapter 13.

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.

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.

Under § 2632(c)(3)(A), 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 part, that the term “GST trust” means a trust that could have a generation-skipping transfer with respect to the transferor unless an exception enumerated in § 2632(c)(3)(B)(i)-(vi) applies.

Section 2632(c)(4) provides that for purposes of § 2632(c), an indirect skip to which § 2642(f) applies shall be deemed to have been made only at the close of the ETIP. The fair market value of such transfer shall be the fair market value of the trust property at the close of the ETIP.

Section 2632(c)(5)(A)(i) provides, in relevant part, that an individual may elect to have § 2632(c) not apply to (I) an indirect skip, or (II) any and all transfers made by such individual to a particular trust. Section 2632(c)(5)(B)(i) provides that an election under § 2632(c)(5)(A)(i)(I) shall be deemed to be timely if filed on a timely filed gift tax return for the calendar year in which the transfer was deemed to have been made pursuant to § 2632(c)(4). Section 2632(c)(5)(B)(ii) provides that an election under § 2632(c)(5)(A)(i)(II) may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

Section 26.2632-1(b)(2)(i) of the Generation-Skipping Transfer Tax Regulations provides that, in the case of an indirect skip made after December 31, 2000, to which § 2642(f) (relating to transfers subject to an ETIP) does not apply, the transferor's unused GST exemption is automatically allocated to the property transferred (but not in excess of the fair market value of the property on the date of the transfer). This automatic allocation is effective whether or not a Form 709 is filed reporting the transfer, and is effective as of the date of the transfer to which it relates. An automatic allocation is irrevocable after the due date of the Form 709 for the calendar year in which the transfer is made. In the case of an indirect skip to which section 2642(f) does apply, the indirect skip is deemed to be made at the close of the ETIP and the GST exemption is deemed to be allocated at that time.

Section 26.2632-1(b)(2)(ii) provides that, except as otherwise provided, the transferor may prevent the automatic allocation of GST exemption with regard to an indirect skip (including indirect skips to which section 2642(f) may apply) by making an election as provided in § 26.2632-1(b)(2)(iii).

Section 26.2632-1(b)(2)(iii)(A) provides, in relevant part, 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). A transferor may elect out with respect to – (1) one or more prior-year transfers subject to § 2642(f) (regarding ETIPs) made by the transferor to a specified trust or trusts; (2) one or more (or all) current year transfers made by the transferor to a specified trust or trusts; (3) one or more (or all future transfers made by the transferor to a specified trust or trusts; (4) all future transfers made by the transferor to all trusts (whether or not in existence at the time of the election out); or (5) any combination of (1) through (4).

Section 26.2632-1(b)(2)(iii)(B) provides that to elect out, the transferor must attach an election out statement to a Form 709 filed within the time period provided in § 26.2632-1(b)(2)(iii)(C). In general, the election out statement must identify the trust, and specifically must provide that the transferor is electing out of the automatic allocation of GST exemption with respect to the described transfer or transfers. Under § 26.2632-1(b)(2)(iii)(C), to elect out, the Form 709 with the attached election out statement must be filed on or before the due date for timely filing the Form 709 for the calendar year in which the ETIP closes.

Section 26.2632-1(c)(1)(i) provides that a direct skip or an indirect skip that is subject to an ETIP is deemed to have been made only at the close of the ETIP. The transferor may prevent the automatic allocation of GST exemption to a direct skip or an indirect skip by electing out of the automatic allocation rules at any time prior to the due date of the Form 709 for the calendar year in which the close of the ETIP occurs (whether or not any transfer was made in the calendar year for which the Form 709 was filed, and whether or not a Form 709 otherwise would be required to be filed for that year).

Section 2642(b)(1)(A) provides 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)), or, in the case of an allocation deemed to have been made at the close of an ETIP, its value at the time of the close of the ETIP.

Section 2642(f)(1) provides that for purposes of determining the inclusion ratio, if an individual makes an inter vivos transfer of property, and the value of such property would be includible in the gross estate of such individual under chapter 11 if such individual died immediately after making such transfer (other than by reason of § 2035), any allocation of GST exemption to such property shall not be made before the close of the ETIP (and the value of such property shall be determined under § 2642(f)(2)).

Section 2642(f)(3) provides that for purposes of § 2642(f), the term “estate tax inclusion period” means any period after the transfer described in paragraph (1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under chapter 11 if the transferor died.

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(c)(5).

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). 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 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. Accordingly, Taxpayer is granted an extension of time of 120 days from the date of this letter to elect out of the automatic allocation rules under § 2632(c)(5)(A)(i)(I) with respect to the Year 1 transfer to Trust 1, Year 2 transfer to Trust 2, Year 3 transfer to Trust 3, Year 4 transfer to Trust 4, Year 5 transfers to Trust 5 and Trust 6, Year 6 transfer to Trust 7, Year 8 transfer to Trust 8, and Year 9 transfer to Trust 9 and under § 2632(c)(5)(A)(i)(II) with respect to the Year 8 transfers to Children's Trusts. Each election should be made on an amended Form 709 for the year in which the ETIP closed.

Taxpayer should file the amended Forms 709 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. Taxpayer should attach a copy of this letter to the amended Forms 709.

The rulings contained in this letter are based upon information and representations submitted by 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 representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: *Karlene M. Lesho*

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

Enclosure
Copy for § 6110 purposes

cc: