

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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9100.00-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-107308-23

Date:
June 20, 2023

In Re:

Legend

- Wife =
- Husband =
- Trust =
- Date =
- Accounting Firm =

Dear :

This letter responds to your personal representative’s letter of January 14, 2023, and subsequent correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code (Code) and § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 2632(b)(3) to elect out of the generation-skipping transfer (GST) exemption automatic allocation rules with respect to a transfer to a trust.

The facts and representations submitted are as follows:

On Date, a date after October 23, 1986, Husband and Wife (Donors) established Trust, an irrevocable trust, for the benefit of their grandchildren.

Under the terms of Trust, a separate trust is established for the benefit of each of Donors' four grandchildren. At the time the trust was established, the trustee could not make distributions to anyone other than the grandchildren.

Donors made transfers to Trust in 2010. Because Trust is a skip person (within the meaning of § 2613(a)), transfers to Trust are direct skips (within the meaning of § 2612(c)).

Donors relied on Accounting Firm for tax advice. Donors failed to inform Accounting Firm of the gifts made to Trust in 2010. As a result, Accounting Firm failed to prepare a 2010 Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return for either of the Donors in 2010 to opt out of the automatic allocation of GST exemption to the transfers to Trust. Accordingly, Donors failed to elect out of automatic allocation for their 2010 transfers to Trust, and GST exemption was automatically allocated to these transfers.

Donors request an extension of time under § 2642(g) and § 301.9100-3 to elect under § 2632(b)(3) to have the automatic allocation of GST exemption not apply to Donors' 2010 transfers to Trust.

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 GST tax imposed by § 2601 is the taxable amount multiplied 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.

Section 2612(c) provides that the term "direct skip" means a transfer of property subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) provides that the term "skip person" means (1) a natural person assigned to a generation which is two or more generations below the generation assignment of the transferor, or (2) a trust if all interests in such trust are held by skip persons.

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(b) provides that if any individual makes a direct skip during such

individual's lifetime, any unused portion of such individual's GST exemption is allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the direct skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(b)(3) provides that an individual may elect to have § 2632(b) not apply to any transfer.

Section 26.2632-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provides that the transferor may prevent the automatic allocation of GST exemption by describing on a timely-filed United States Gift (and Generation-Skipping Transfer) Tax Return (Form 709) the transfer and the extent to which the automatic allocation is not to apply.

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 allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (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 (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.

Under § 301.9100-1(c), 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 six 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 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.

Section 301.9100-3(b)(1)(i) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the Internal Revenue Service.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time to make the regulatory election only when the interests of the Government will not be prejudiced by the granting of relief.

Section 301.9100-3(c)(1)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable year that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Based on the facts submitted and representations made, we conclude that Donors acted reasonably and in good faith under § 301.9100-3(b). In addition, we conclude that granting relief will not prejudice the interests of the government. Accordingly, Donors are granted an extension of time of 120 days from the date of this letter to make an election under § 2632(b)(3) that the automatic allocation rules not apply to Donors' 2010 transfers to Trust.

The election should be made on an amended Form 709 and filed with the Kentucky Service Center at the following address: Internal Revenue Service Center Attn: E&G, Stop 824G 7940 Kentucky Drive Florence, KY 41042-2915. A copy of this letter should be attached to the Form 709.

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

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.

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

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 and Special Industries

By:

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

Enclosure:
Copy for § 6110 purposes

cc: