

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201653013**  
Release Date: 12/30/2016

Third Party Communication: None  
Date of Communication: Not Applicable

Index Number: 2632.00-00, 2642.00-00,  
9100.00-00

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:04  
PLR-118263-16  
Date:  
September 19, 2016

LEGEND

Donor =  
Date 1 =  
X =  
Trust 1 =

Child =  
Date 2 =  
Y =  
Trust 2 =

Trust 3 =

Grandchild 1 =  
Grandchild 2 =  
Accounting Firm =  
Year =  
Date 3 =

Dear :

This letter responds to the letter dated May 31, 2016, and subsequent correspondence, submitted by your authorized representative, requesting an extension of time

pursuant to § 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.

## FACTS

The facts and representations submitted are as follows.

On Date 1, in Year (a date after December 31, 2000), Donor transferred \$x to Trust 1, an irrevocable trust for the benefit of Child and Child's descendants. Trust 1 has GST tax potential.

On Date 2, in Year (a date after December 31, 2000), Donor established irrevocable trusts for two of her grandchildren: Trust 2 to benefit Grandchild 1 and Trust 3 to benefit Grandchild 2. Donor transferred \$y to each of Trust 2 and Trust 3. Trust 2 and Trust 3 are direct skips, as defined in § 2632(a)(2).

Accounting Firm was retained to prepare and file Donor's Year Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. On a timely filed Form 709, Accounting Firm incorrectly reported Donor's transfer of \$x to Trust 1 as a direct skip and did not opt out of the automatic allocation of GST exemption to that gift. Accounting Firm also failed to report Donor's direct skip transfers of \$y to each of Trust 2 and Trust 3 and as a result, the automatic allocation rules of § 2632(b)(1) applied to allocate Donor's GST exemption to the transfers. Donor did not intend to allocate GST exemption to the Year transfer to Trust 1 which was established to primarily benefit Donor's Son. Further, Donor did not intend to allocate GST exemption to Trust 2 or Trust 3 because in Year the GST tax rate was zero.

Donor requests an extension of time to elect out of the automatic allocation rules with respect to the Year transfers.

## 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 imposed by § 2601 is the taxable amount multiplied by the applicable rate.

Section 2612(c) provides that the term "direct skip" means 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, in part, that the term "skip person" means -- (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 nonskip person.

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 2631(c) provides that, for purposes of § 2631(a), the GST exemption amount for any calendar year shall be equal to the applicable exclusion amount under § 2010(c) for such calendar year.

Section 2632(a)(1) provides that any allocation by an individual of his or her 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(a)(2) provides that the manner in which allocations are to be made shall be prescribed by forms or regulations issued by the Secretary.

Under § 2632(b)(1), if an individual makes a direct skip transfer during his or her lifetime, 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)(2) provides that for purposes of § 2632(b)(1), the unused portion of an individual's GST exemption is that portion of such exemption which has not previously been allocated by such individual (or treated as allocated under § 2632(b)(1) or § 2632(c)(1)).

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 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 is treated as 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, as

defined in § 2632(c)(3)(B). Under § 2632(c)(3)(B), a GST trust is a trust that could have GST potential with respect to the transferor unless the trust satisfies any of the exceptions listed in § 2632(c)(3)(B)(i)-(vi).

Section 2632(c)(5)(A)(i) provides that an individual may elect to have the automatic allocation rules of § 2632(c)(1) not apply to an indirect skip, or any or all transfers made by such individual to a particular trust. Section 2632(c)(5)(B)(ii) provides that the election 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 the estate tax inclusion period or 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.

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 2641(b) provides that the term "maximum Federal estate tax rate" means the maximum rate imposed by § 2001 on the estates of decedents dying at the time of the taxable distribution, taxable termination, or direct skip, as the case may be.

Section 302(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TRUIRJCA), P.L. 111-312 (124 Stat. 3296), provides that in the case of any GST made after December 31, 2009, and before January 1, 2011, the applicable rate determined under § 2641(a) shall be zero.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a GST is 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 under § 2631 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, 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 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). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

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 generation-skipping transfer 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. Section 301.9100-1(a).

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, 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.

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)(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 advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Donor is 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 do not apply to the Year transfers to Trust 1, Trust 2, and Trust 3. The election should be made on a supplemental Form 709 for Year. The Form 709 should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999. You should attach a copy of this letter to the supplemental Form 709. We have enclosed a copy for this purpose.

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.

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.

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: Lorraine E. Gardner  
Lorraine E. Gardner  
Senior Counsel, Branch 4  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy for § 6110 purposes  
Copy of this letter