

Internal Revenue Service

Number: **201447026**

Release Date: 11/21/2014

Index Number: 2642.00-00, 9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:04

PLR-101522-14

Date:

July 16, 2014

Re:

LEGEND

Date 1 =
Year 1 =
Decedent =
Trust =

Date 2 =
Son =
Daughter =
Trust 1 =
Trust 2 =

Year 2 =
Law Firm =
Attorney =
Date 3 =

Dear :

This letter responds to your submission dated December 26, 2013, and subsequent correspondence, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to allocate generation-skipping transfer (GST) exemption to Trust.

FACTS

The facts and representations submitted are as follows.

On Date 1 in Year 1, Decedent established and funded Trust, a grantor retained income trust, under which Decedent's retained interest would terminate on Date 2. The co-trustees of Trust were Son and Daughter. Decedent survived the term. The estate tax inclusion period (ETIP) with respect to Decedent's transfer to Trust closed for GST purposes on Date 2 in Year 2, the year that Decedent's retained interest in Trust terminated. At the close of the ETIP, Trust was divided into Trust 1 and Trust 2. Each trust has GST potential. Date 2 is a date prior to December 31, 2000.

In Year 1, at the time Trust was drafted, executed and funded, Son was an attorney and practiced in tax, estate, and business planning at Law Firm. Attorney drafted Trust and prepared and filed Decedent's Year 1 Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. The Year 1 Form 709 reported the transfer to Trust. Attorney did not allocate Decedent's GST exemption to the transfer in Year 1 because Trust was subject to an ETIP.

Son was the sole advisor to Decedent and Daughter regarding the proper management of Trust. Son failed to advise Decedent and Daughter to allocate Decedent's GST exemption at the end of the ETIP when Trust terminated in Year 2. Decedent's available GST exemption had not been allocated to Trust at the end of the ETIP in Year 2. Decedent and Son died on Date 3.

You have requested an extension of time under § 2642(g) and § 301.9100-3 to allocate Decedent's GST exemption to the value of the trust property in Trust on the date of the expiration of the ETIP.

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 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. Under § 2642(a) the inclusion ratio with respect to any property

transferred in a GST is the excess (if any) of one 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, and the denominator of which is the value of the property transferred to the trust.

Section 2631(a) as effective in the year at issue, provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) 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)(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 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 estate tax inclusion period (ETIP). Section 2642(f)(2)(B) provides, in relevant part, that the value of such property shall be its value as of the close of the estate tax inclusion period.

Section 2642(g)(1)(A) provides that the Secretary will 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 § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary will 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) will 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 deemed 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.

Section 301.9100-1(c) provides that 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 due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. 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.

Requests for relief under § 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 that granting 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, an extension of time of 120 days from the date of this letter is granted to allocate Decedent's GST exemption to the transfer to Trust. The allocation will be effective as of the end of the ETIP on Date 2. The allocation should be made on Form 709 for Year 2 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each Form 709.

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,

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)