

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201451025**

Release Date: 12/19/2014

Index Number: 2632.00-00, 9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:PSI:B04
PLR-124954-14

Date:
September 08, 2014

Legend:

Decedent	=
Year 1	=
Year 2	=

Dear :

This letter responds to your authorized representative's letter of June 10, 2014, requesting an extension of time under § 2642(g)(1) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Decedent's generation-skipping transfer (GST) exemption to transfers to four trusts that were incorrectly treated as nontaxable for GST tax purposes.

The facts submitted and the representations made are as follows. In Year 1, Decedent made cash transfers to four trusts with GST tax potential. Decedent retained a tax professional to prepare his Form 709, United States (Gift and Generation-Skipping Transfer) Tax Return, for Year 1. In preparing the Form 709, the tax professional incorrectly reduced the amount of GST exemption allocated to each transfer by the annual exclusion amount for Year 1 under § 2503(b). Decedent died in Year 2. It has been represented that Decedent has sufficient GST exemption available to allocate to the four transfers that were incorrectly treated as nontaxable for GST tax purposes.

Law and Analysis:

Section [2501\(a\)](#) imposes a tax for each calendar year on the transfer of property by gift during the year by an individual.

Section [2503\(b\)\(1\)](#) provides, in part, that in the case of gifts (other than gifts of future interests in property) made to any person by the donor during the calendar year, the first \$10,000 of such gifts to such person shall not, for purposes of § 2503(a), be included in the total amount of gifts made during such year.

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 2631(a) provides that for purposes of determining the inclusion ratio, every individual has GST exemption amount which the individual (or his executor) can allocate 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 2631(c) provides that for purposes of § 2631(a), the GST exemption amount for any calendar year is equal to the basic exclusion amount under § 2010(c) for such calendar year.

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.

Section 26.2632-1(b)(2)(ii) of the Generation-Skipping Transfer Tax Regulations provides, in part, that the transferor may prevent the automatic allocation of GST exemption with regard to an indirect skip by making an affirmative allocation of GST exemption on a Form 709 filed at any time on or before the due date for timely filing (within the meaning of § 26.2632-1(b)(1)(ii)) of an amount that is less than (but not equal to) the value of the property transferred as reported on that return, in accordance with the provisions of § 26.2632-1(b)(4). See § 26.2632-1(b)(4)(iii) Example 6.

Section 26.2632-1(b)(4)(i) provides, in part, that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(c)(1) provides that in the case of a direct skip which is a nontaxable gift, the inclusion ratio shall be zero.

Section 2642(c)(2) provides that § 2642(c)(1) shall not apply to any transfer to a trust for the benefit of an individual unless--(A) during the life of such individual, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such individual, and (B) if the trust does not terminate before the individual dies, the assets of such trust will be includible in the gross estate of such individual.

Section [2642\(c\)\(3\)](#) provides that the term “nontaxable gift” means any transfer of property to the extent such transfer is not treated as a taxable gift by reason of-- (A) § 2503(b) (taking into account the application of § 2513), or (B) § 2503(e).

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, the personal representatives are granted an extension of time of 120 days from the date of this letter to allocate Decedent's GST exemption to the portion of the transfers to the four trusts incorrectly treated as nontaxable for GST tax purposes. The allocations will be effective as of the date of each transfer. The allocations should be made on a supplemental Form 709 for Year 1, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental 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) 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,

Melissa C. Liquerman

Melissa C. Liquerman
Chief, Branch 4
(Passthroughs & Special Industries)

Enclosure:
Copy for § 6110 purposes