Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:04
PLR-135535-14

Date:
March 18, 2015

Re:

Legend

Decedent	=
Date 1	=
Trust 1	=
Trust 2	=
Daughter 1	=
Daughter 2	=
Wife	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	=
Year 7	=
Year 8	=
Year 9	=
Year 10	=
CPA 1	=
CPA 2	=
Tax Professional	=
Year 11	=
Year 12	=
Year 13	=
Year 14	=
Year 15	=

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Year 16 =
Date 2 =

Dear :

This responds to your authorized representative's letter dated September 19, 2014, 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 allocate generation-skipping transfer (GST) tax exemptions to transfers to trusts.

FACTS

The facts and representations submitted are summarized as follows:

On Date 1, Decedent created Trust 1 and Trust 2 for the benefit of Daughter 1 and Daughter 2, respectively. The terms of Trust 1 and Trust 2 (collectively, Trusts) are identical in all material respects, but for the identity of the beneficiary. Under the provisions of the Trusts, a GST will likely occur. However, Trust 1 and Trust 2 are not considered "GST trusts" within the meaning of § 2632(c)(3)(B). Accordingly, the automatic allocation rules contained in § 2632(c) will not apply to either Trust 1 or Trust 2.

In Year 1 through Year 10, Decedent made transfers to each of Trust 1 and Trust 2. CPA 1 prepared Decedent's and Wife's Year 1 United States Gift (and Generation-Skipping Transfer) Tax Return (Form 709). CPA 2 prepared Decedent's and Wife's Year 8 Form 709. Tax Professional prepared Decedent's and Wife's Year 2 through Year 7, Year 9, and Year 10 Forms 709. On each of the Year 1 through Year 10 Forms 709, Decedent and Wife signified their consent to treat the gifts made in each year as being made one-half by each spouse, pursuant to § 2513. On the Year 1 through Year 10 Forms 709, CPA 1, CPA 2, and Tax Professional reported the transfers for gift tax purposes, treating each transfer as qualifying for the gift tax annual exclusion under § 2503(b). However, CPA 1, CPA 2, and Tax Professional each failed to allocate or advise Decedent and Wife to allocate their GST exemption to the gifts on the returns.

Decedent and Wife have insufficient remaining GST exemption to exempt all of the Year 8 transfers. Consequently, Trust 1 and Trust 2 will have an inclusion ratio between zero and one.

In Year 11 through Year 16, Decedent and Wife each separately transferred the annual exclusion amount to each of Trust 1 and Trust 2. However, Decedent and Wife did not file Forms 709 reporting the transfers and accordingly, no GST exemption was allocated for any of the transfers made during this period. Similar to the previous years in which gift tax returns were filed, Decedent's and Wife's tax advisors failed to

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recognize that GST exemption should be allocated to the gifts to the Trusts and failed to make such recommendation to Decedent and Wife. Decedent died on Date 2.

Decedent's estate and Wife request an extension of time pursuant to § 2642(g) and §§ 301.9100-1 and 301.9100-3, to allocate their GST exemption to their respective transfers to Trust 1 and Trust 2 made in Years 1 through 16, and are requesting that the GST exemption allocated to the transfers will be effective as of the date of each transfer.

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. Section 2513(a)(1) only applies if both spouses have signified their consent to the application of this section 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 generation-skipping transfer. A generation-skipping transfer 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 is the taxable amount multiplied by the applicable rate.

Section 2641(a) defines the term "applicable rate" with respect to any GST as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2642(a)(1) provides that, generally, the inclusion ratio with respect to any property transferred in a GST is the excess of 1 over the "applicable fraction." With respect to a GST that is not a direct skip, § 2642(a)(2) provides that, in general, the applicable fraction 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 in effect for Year 1 through Year 8, provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of $1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2631(a), as in effect for Year 9 through Year 16, 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

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property with respect to which such individual is the transferor. 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 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 2632(c) is effective for transfers subject to chapter 11 or 12 made after December 31, 2000. See P.L. 107-16, § 561(a). Section 2632(c)(1), as amended, 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 portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(3)(A) provides that for purposes of § 2632(c), the term indirect skip means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 to a GST trust.

Section 2632(c)(3)(B) provides, in part, that the term "GST trust" means a trust that could have a GST with respect to the transferor unless the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons before the date that the individual attains age 46. For purposes of this subparagraph, the value of transferred property shall not be considered to be includible in the gross estate of a non-skip person or subject to a right of withdrawal by reason of such person holding a right to withdraw so much of such property as does not exceed the amount referred to in §2503(b) with respect to any transferor, and it shall be assumed that powers of appointment held by non-skip persons will not be exercised.

Section 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides 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(b)(1) 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, the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12

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(within the meaning of § 2001(f)(2)).

Section 2642(g)(1)(A) provides 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 this paragraph, 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 under this paragraph, 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.

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 Internal Revenue Code except in subtitles E, G, H, and I.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

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 election 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

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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 to 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. Therefore, Decedent's estate and Wife are granted an extension of time of 120 days from the date of this letter to allocate their respective available GST exemption to the transfers made to Trust 1 and Trust 2 in Years 1 through 16. The allocations will be effective as of the date of each transfer and will be based on the full value of the assets transferred to Trust 1 and Trust 2 on the date of each transfer.

The allocations should be made on supplemental and original Forms 709 for each year in which a transfer was made, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each supplemental or original Form 709. A copy of this letter is enclosed 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.

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

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material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Melissa C. Liquerman
Chief, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc:

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