

Internal Revenue Service

Number: **201836004**
Release Date: 9/7/2018
Index Number: 2632.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-117071-18

Date:
June 05, 2018

Legend

Taxpayer
Spouse

Date
Year 1
Year 2
Trust 1

Trust 2
Trust 3

Child 1
Child 2
Child 3
Accountant

a
w
c
x
e
y
z

Dear _____ :

This letter responds to your authorized representative's letter dated November 9, 2017, and subsequent correspondence, requesting a generation-skipping transfer (GST) tax ruling with respect to transfers made to three trusts.

The facts and representations submitted are summarized as follows:

On Date in Year 1, Taxpayer established three irrevocable trusts, Trust 1, Trust 2, and Trust 3, for the primary benefit of his three children, Child 1, Child 2, and Child 3, respectively. The terms of the three trusts are substantially identical except for the named primary beneficiary. Under the terms of each trust, the trustee may make discretionary distributions of income for the health, education, and support of the primary beneficiary. Following the death of the second to die of Taxpayer and Spouse, the trustee may make discretionary distributions of principal for the health, education, and support of the primary beneficiary. The primary beneficiary has the right to withdraw the principal of the trust in the following proportions when the beneficiary reaches the following ages: a at age w, c at age x, e at age y, and the remainder at age z.

Furthermore, each trust grants the primary beneficiary of each respective trust a testamentary power to appoint the assets held in the trust to the primary beneficiary's estate, the creditors of the primary beneficiary's estate, or to any person or corporation. To the extent such power is not effectively exercised, the assets of the trust will be administered as otherwise provided in the trust agreement. If the primary beneficiary dies before the complete distribution of the trust, the trustee will, subject to the provisions of the power of appointment, distribute the trust assets in fee and *per stirpes* to the primary beneficiary's then living descendants.

Taxpayer made gifts to the trusts in Year 1 and Year 2. Taxpayer and Spouse, through their Accountant, each filed a timely Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return for Year 1 and Year 2. On each form, Taxpayer and Spouse signified their consent to treat the Year 1 and Year 2 transfers as having been made one-half by each spouse under § 2513. On the Year 1 and Year 2 returns filed by Taxpayer, Taxpayer erroneously allocated GST exemption to the transfers to the three trusts. On the Year 1 and Year 2 returns filed by Spouse, Spouse erroneously allocated GST exemption to the transfers to the three trusts. There have been no taxable distributions or taxable terminations with respect to the three trusts that would result in a GST tax liability on the part of any of such trusts or their beneficiaries.

Spouse requests a ruling that the allocations of GST exemption made to the three trusts are void because there was no GST potential with respect to those transfers.

LAW AND ANALYSIS

Section 2513(a)(1) provides that a gift made by one spouse to any person other than his spouse shall, for purposes of this chapter, 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 2601 provides that a tax is imposed on every generation-skipping transfer (GST). Section 2611(a) provides that the term "generation-skipping transfer" means: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2613 defines a skip person, in part, as a natural person assigned to a generation which is two or more generations below the generation assignment of the transferor.

Section 2602 provides that the amount of GST tax is the taxable amount multiplied by the applicable rate.

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

Under § 2642(a)(1) the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess 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 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.

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) 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 [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. The allocation must clearly identify the trust to which the allocation is being made, the amount of GST exemption allocated to it, and if the allocation is late or if an inclusion ratio greater than zero is claimed, the value of the trust assets at the effective date of the allocation. With respect to a timely allocation, an allocation of GST exemption becomes irrevocable after the due date of the return. Except as provided in § [26.2642-3](#) (relating to charitable lead annuity trusts), an allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the trust. An allocation is also void if the allocation is made with respect to a trust that has no GST potential with respect to the transferor making the allocation, at the time of the allocation. For this purpose, a trust has GST potential even if the possibility of a GST is so remote as to be negligible.

Section [2041\(a\)\(2\)](#) includes in the gross estate property over which the decedent has at the time of his death a general power of appointment created after October 20, 1942.

Section [2652\(a\)\(1\)\(B\)](#) provides that in the case of property subject to the gift tax, the donor is the transferor for GST purposes.

Section [2642\(b\)\(1\)](#) provides, in relevant part, that if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § [2632\(b\)\(1\)](#) or (c)(1), the value of such property for purposes of determining the inclusion ratio shall be its value as finally determined for gift tax purposes and such allocation shall be effective on and after the date of such transfer.

In this case, at the time of the allocation of GST exemption to the three trusts, the trusts had no GST potential with respect to Spouse. The primary beneficiary of each trust is a child of the Taxpayer. The trustee is authorized to make payments of income and principal to the primary beneficiary and the primary beneficiary may withdraw amounts of principal from the primary beneficiary's trust when the primary beneficiary reaches a certain age. None of these payments are payments to skip persons and are therefore not generation-skipping transfers with respect to Spouse. When the primary beneficiary dies, payments from the trust are subject to the primary beneficiary's general power of appointment, causing the trust to be includible in the child's gross estate under § [2041\(a\)\(2\)](#). As a result, the primary beneficiary, and not Spouse, will be the transferor of any payments made from the trust after the death of the primary beneficiary under § [2652\(a\)\(1\)\(B\)](#). Accordingly, based on the facts submitted and the representations made, we conclude that Spouse's allocation of GST exemption to the three trusts is void under § [26.2632-1\(b\)\(4\)\(i\)](#).

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

Except as expressly provided herein, we neither express nor imply any opinion 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 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.

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.

Sincerely,

Leslie H. Finlow

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

Enclosures

Copy for § [6110](#) purposes
Copy of this letter