

Internal Revenue Service

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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-122148-18
Date:
December 11, 2018

Legend

Husband
Wife
Daughter 1
Daughter 2
Son
Grandchild 1A
Grandchild 1B
Grandchild 2A
Grandchild 2B
Grandchild 2C
Grandchild 3A
Grandchild 3B
Grandchild 3C
Trust 1A
Trust 1B
Trust 2A
Trust 2B
Trust 2C
Trust 3A
Trust 3B
Trust 3C
Date 1
Date 2
Date 3
Year

Dear :

This letter responds to your personal representative's letter of July 13, 2018, and subsequent correspondence, requesting a ruling concerning the generation-skipping transfer tax (GST) consequences of gifts made by the taxpayer to several trusts.

The facts and representations submitted are summarized as follows:

On Date 1, Husband executed three irrevocable trust agreements for the benefit of his descendants. Under the terms of the first trust agreement, two identical trusts, Trust 1A and Trust 1B, were created for the benefit of Husband's grandchildren, Grandchild 1A and Grandchild 1B, with his daughter, Daughter 1, serving as the trustee. Under the terms of the second trust agreement, three identical trusts, Trust 2A, Trust 2B, and Trust 2C, were created for the benefit of Husband's grandchildren, Grandchild 2A, Grandchild 2B, and Grandchild 2C, with his daughter, Daughter 2, serving as the trustee. Under the terms of the third trust agreement, three identical trusts, Trust 3A, Trust 3B, and Trust 3C, were created for the benefit of Husband's grandchildren, Grandchild 3A, Grandchild 3B, and Grandchild 3C, with his son, Son, serving as the trustee. The terms governing each trust are identical, with the exception of the identities of the beneficiaries and the trustees.

On Date 2, Husband transferred an interest in a partnership to each trust. Each trust provides, in relevant part, that until the trust terminates, the trustees shall pay to the beneficiary, or apply for his benefit, as much of the net income as the trustees, in their sole discretion, shall determine. At the end of each trust year, the trustees shall add to principal any net income not so paid or applied and thereafter the same shall be dealt with as principal for all purposes. The trustees may, at any time, pay to the beneficiary, or apply for his or her benefit, upon such occasions as the trustees deem advisable so much or all of the principal of the separate trust held for the beneficiary as the trustees deem advisable. When the beneficiary reaches the age of 30, the trust will terminate and the entire remaining principal, together with all accrued and undistributed income, shall be paid to the beneficiary. If the beneficiary dies before reaching the age of 30, the separate trust held for him or her shall terminate on his or her death and the trustees shall pay the remaining principal, together with all accrued and undistributed income, to the beneficiary's then living issue or, if there is none, to the then living issue of the beneficiary's most immediate ancestor who is a child of Husband or if there be none to Husband's grandchildren then living.

Husband and Wife each filed a Year Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, on Date 3. On each form, Husband and Wife signified their consent to treat the transfers occurring in Year as having been made one-half by each spouse under § 2513 of the Internal Revenue Code. The transfers to the trusts were incorrectly reported on Part 3 of Schedule A of Form 709 as indirect skips. Furthermore, attached to each return was a statement that pursuant to § 2632(c)(5)(A)(i) and § 26.2632-1(b)(2)(iii) of the Generation-Skipping Transfer Tax Regulations the donor elects that the automatic allocation rules will not apply to any

transfer to the trusts. Husband and Wife did not pay any GST tax with respect to the gifts to the trusts. Wife is deceased. Husband is the executor of Wife's estate.

You have requested a ruling that, pursuant to § 2632(b)(1), Husband's unused GST exemption was automatically allocated to the transfers to the trusts on Date 2.

Section 2501 of the Internal Revenue Code imposes a tax for each calendar year on the transfer of property by gift during such calendar year by any individual, resident, or nonresident. Section 2511 provides that, subject to certain limitations, the gift tax applies whether the transfer is in trust or otherwise, direct or indirect, and whether the property transferred is real or personal, tangible or intangible.

Section 2513(a)(1) provides that a gift made by one spouse to any person other than the other spouse shall, for the 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 2513(a)(2) provides that paragraph (1) shall apply only if both spouses have signified (under the regulations provided for in subsection (b)) their consent to the application of paragraph (1) in the case of all such gifts made during the calendar year by either while married to the other.

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 2652(a)(2) and § 26.2652-1(a)(4) of the Generation-Skipping Transfer Tax Regulations provide that, if, under § 2513, one-half of a gift is treated as made by an individual and one-half is treated as made by the spouse of the individual, then for purposes of the GST tax, each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513.

Section 2601 imposes a tax on every generation-skipping transfer (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 is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Section 2642(a) provides the method for determining the inclusion ratio.

Section 2612(c)(1) 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 that the term "skip person" means a natural person assigned to a

generation which is two or more generations below the generation assignment of the transferor, or a trust if all “interests” in such trust are held by skip persons.

Section 2654(b) provides that for purposes of GST tax the portions of a trust attributable to transfers from different transferors shall be treated as separate trusts, and substantially separate and independent shares of different beneficiaries in a trust shall be treated as separate trusts.

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 2632(b)(1) provides that if any individual makes a direct skip during his 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 direct skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

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 26.2632-1(b)(1)(i) provides, in relevant part, that if a direct skip occurs during the transferor's lifetime, the transferor's GST exemption not previously allocated (unused GST exemption) is automatically allocated to the transferred property (but not in excess of the fair market value of the property on the date of the transfer).

Section 26.2632-1(b)(1)(ii) provides that a Form 709 is timely filed if it is filed on or before the date required for reporting the transfer if it were a taxable gift (i.e., the date

prescribed by § 6075(b), including any extensions to file actually granted (the due date)).

Section 2632(c)(5)(A)(i)(I) provides that an individual may elect to have § 2632(c) not apply to an indirect skip. Section 2632(c)(5)(B)(i) provides that an election under § 2632(c)(5)(A)(i)(I) shall be deemed to be timely if filed on a timely filed gift tax return for the calendar year in which the transfer was made.

In this case, the terms of the trusts provide that the trustee may make discretionary distributions of corpus and income to the beneficiary, who is a grandchild of Husband, until the beneficiary reaches age 30. If the beneficiary dies before reaching age 30, the corpus is to be distributed pursuant to the beneficiary's issue, or if none to the issue of beneficiary's parents, or if none to the other living grandchildren of Husband. In all cases, the ultimate beneficiary of each trust is a grandchild or more remote descendant of Husband. Therefore, each trust is a skip person and every transfer made by Husband and Wife to each trust is considered a direct skip.

Pursuant to § 2632(b)(1), the unused portions of Husband's and Wife's GST exemption were allocated to the transfers made to the trusts. Husband and Wife did not opt out of the automatic allocation to direct skips pursuant to § 2632(b)(3). Husband and Wife did opt out of the automatic allocation to indirect skips pursuant to § 2632(c)(5)(A)(i), but that statement is irrelevant, since all transfers to the trusts were direct skips. Therefore, based on the facts submitted and the representations made, we conclude that Husband's unused GST exemption was automatically allocated to the transfers to the trusts on Date 2, pursuant to § 2632(b).

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,

Lorraine E. Gardner

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

Enclosures

Copy for § 6110 purposes

Copy of this letter

cc: