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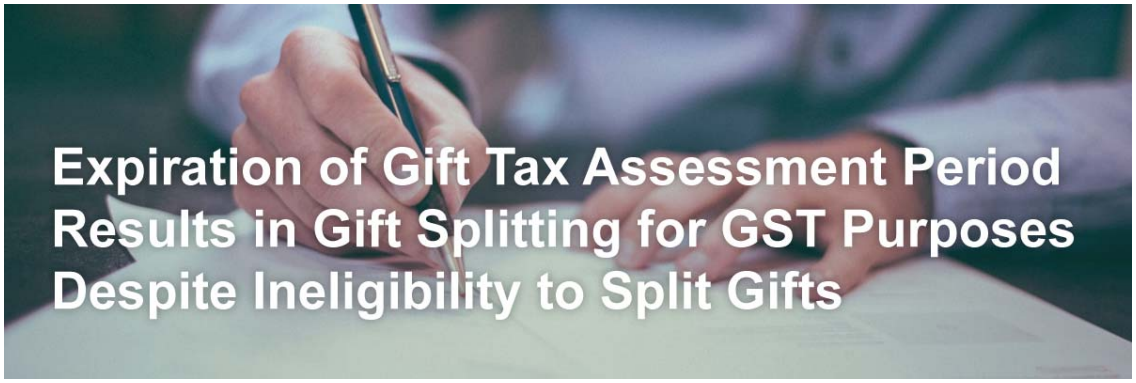

In PLR 201724007, the IRS ruled on the implications of electing to split gifts to a GST Trust where the gift would have been ineligible for gift split treatment under Section 2513, had the period for determining the gift split's effectiveness under Section 2504(c) not expired. Although the couples' election to split gifts should have been ineffective as to the gift made to the GST Trust due to one spouse's beneficial interests in the trust, the election to split gifts could not be amended because the statute of limitations had run. As a result, the gift split treatment was irrevocable and the entire value of the gift to the trust was covered by a

GST allocation of each spouse's GST exemption. *See* PLR 201724007.

PLR 201724007

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Internal Revenue Service

Number: **201724007**
Release Date: 6/16/2017

Index Number: 2513.00-00, 2632.00-00, 2652.00-00

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:B04
PLR-127453-16

Date:
March 02, 2017

Re:

Legend

Husband =
Wife =
Trust =
Date 1 =
Date 2 =
Year 1 =
Year 2 =
$A =
$B =

Dear :

This letter responds to your personal representative's letter of September 2, 2016, requesting rulings regarding the effect of gift splitting under § 2513 of the Internal Revenue Code to certain transfers to a trust and the application of the Generation-Skipping Transfer (GST) allocation rules under § 2632(c) to the transfers to the trust.

The facts and representations submitted are summarized as follows:

On Date 1 (during Year 1), Wife created Trust for the benefit of her spouse (Husband) and their descendants. In Year 1, Wife transferred property to Trust in the amount of $A. Also in Year 1, Husband transferred property to three adult children in the amount of $B.

During Husband's life, the trustee of Trust has discretion to distribute income and principal to Husband for his "comfort, welfare and best interests." If Wife predeceases Husband, the trustee has discretion to distribute income and principal to Husband and their descendants for their "comfort, welfare and best interests." Upon the death of Husband, the remaining principal shall be divided and held in separate trusts for the

benefit of settlor's surviving children (Trust for Child) and issue of deceased children (Trust for Issue of Deceased Child).

Under Article 2.02, the trustee of the Trust for Child is to pay a unitrust amount to such respective child. The trustee may also pay income and principal for the child's support, education, and maintenance or recovery of his or her health as the trustee deems advisable, but only after considering such child's other assets. Each child also is granted a testamentary limited power of appointment, and if the power of appointment is not exercised, any remaining assets are to be divided, *per stirpes*, among the child's living issue and held in further trust(s).

Under Article 2.03, the trustee of the Trust for Issue of Deceased Child is to pay income and principal for the issue's support, education, and maintenance or recovery of his or her health as the trustee deems advisable, but only after considering such issue's other assets. When the issue attains age 25, the trustee is required to distribute all the income to such issue from his or her share. The trustee may distribute principal as provided: one-third after age 30 ½, one-half after age 35, and the remainder of principal after age 40. Upon the death of the issue, the remaining assets are to be distributed to the issue's estate.

Husband and Wife each timely filed a Year 1 Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. On each form, Husband and Wife signified their consent to treat the Year 1 gifts as having been made one-half by each spouse under § 2513. On Wife's Form 709, the property transferred to Trust was mistakenly reported on Schedule A, Part 1 (Gifts Subject Only to Gift Tax). Wife did not report any allocation of her GST exemption to the transfer to Trust on Schedule D, Part 2. Additionally, Wife did not attach a statement electing out of the automatic allocation of GST exemption to the Form 709. Husband's Form 709 was similarly filed.

On Date 2, the Wife and Husband both amended their Forms 709 to correctly report the transfer to Trust on Part 3 (Indirect Skips) of Schedule A and, on Schedule D, Part 2, Line 5, to indicate that their respective GST exemption was automatically allocated to the transfer to Trust. The amended return was filed pursuant to Rev. Proc. 2000-34, 2000-34 I.R.B. 186.

All years at issue are subsequent to December 31, 2000. The period of limitations under § 6501 has expired with respect to the Year 1 Forms 709.

You have requested the following rulings:

1) The period for assessment of gift tax under § 6501 has expired, and accordingly the gift-splitting election on the Year 1 gift tax return is final and it applies to all gifts made during the year by both spouses, as reported on the returns.

2) The automatic allocation rules under § 2632(c) apply to allocate Husband and Wife's GST exemption to the Date 1 transfer to Trust, and the amount of each spouses' GST exemption applied to the transfer is equal to the amount each spouse is deemed to have transferred to the Trust.

LAW AND ANALYSIS

Ruling Request 1

Section 2501(a)(1) imposes a tax for each calendar year on the transfer of property by gift during the calendar year by any individual, resident or nonresident. Section 2511(a) 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 2504(c) provides that if the time has expired under § 6501 within which a tax may be assessed under chapter 12 on the transfer of property by gift made during a preceding calendar period, the value thereof shall, for purposes of computing the tax under this chapter, be the value as finally determined (within the meaning of § 2001(f)(2)) for purposes of this chapter.

Section 25.2504-2(b) of the Gift Tax Regulations provides that if the time has expired under § 6501 within which a gift tax may be assessed under chapter 12 on the transfer of property by gift made during a preceding calendar period and the gift was made after August 5, 1997, the amount of the taxable gift or the amount of the increase in taxable gifts, for purposes of determining the correct amount of taxable gifts for the preceding calendar periods is the amount that is finally determined for gift tax purposes and such amount may not be thereafter adjusted. The rule in this paragraph applies to adjustments involving all issues relating to the gift including valuation issues and legal issues involving the interpretation of the gift tax law.

Section 2513(a)(1) provides, generally, that a gift made by one spouse to any person other than the donor's spouse is considered, for purposes of the gift tax, as made one-half by the donor and one-half by the donor's spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States.

Section 25.2513-1(b)(4) provides that the consent is effective only if both spouses signify their consent to treat all gifts made to third parties during that calendar period by both spouses while married to each other as having been made one-half by each spouse. Such consent, if signified with respect to any calendar period, is effective with respect to all gifts made to third parties during such calendar period except, in part, if one spouse transferred property in part to his or her spouse and in part to third parties, the consent is effective with respect to the interest transferred to third parties only

insofar as such interest is ascertainable at the time of the gift and severable from the interest transferred to his spouse.

Section 25.2513-1(b)(5) provides that the consent applies alike to gifts made by one spouse alone and to gifts made partly by each spouse, provided such gifts were to third parties and do not fall within any of the exceptions set forth in § 25.2513-1(b)(1) through (b)(4). The consent may not be applied only to a portion of the property interest constituting such gifts. If the consent is effectively signified on either the husband's return or the wife's return, all gifts made by the spouses to third parties (except as described in subparagraphs (1) through (4) of this paragraph), during the calendar period will be treated as having been made one-half by each spouse.

In Rev. Rul. 56-439, 1956-2 C.B. 605, a gift is made in trust pursuant to which the trustee is to distribute any part or all of the income or principal of the trust to or among the spouse of the donor and other descendants of the donor at such times and in such proportions and amounts as the trustee determines in its sole discretion. The ruling concludes that, under the facts presented, the value of the right to receive the income or principal to be distributed to the spouse is not susceptible of determination. Therefore, the gift to the spouse is not severable from the gifts to the other beneficiaries, and the gift may not to any extent be considered as made one-half by the donor and one-half by his spouse within the meaning of § 2513.

In this case, in Year 1, Wife transferred property to Trust. On their Year 1 Forms 709, Husband and Wife each elected gift split treatment for those gifts. Husband is an income and principal beneficiary of Trust. Trust provides that while Wife is alive, the trustee has discretion to distribute income and principal to Husband for his "comfort, welfare and best interests." Husband's interests in the income and principal of Trust are not susceptible of determination and, therefore, Husband's interests are not severable from the interests that the other beneficiaries have in Trust. *See* Rev. Rul. 56-439. However, under § 2504(c), the time for determining whether gift split treatment is effective with respect to the Year 1 has expired. Therefore, the gift split treatment is irrevocable for purposes of the Year 1 transfer to Trust.

Ruling Request 2

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 imposed by § 2601 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 2631(a), as in effect for the year at issue, provides that for purposes of determining the GST tax, 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 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 26.2632-1(b)(4)(i) of the Generation-Skipping Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime is made on Form 709.

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.

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 made to a GST trust.

Section 26.2632-1(b)(2)(i) provides that an indirect skip is a transfer of property to a GST trust as defined in § 2632(c)(3)(B) provided that the transfer is subject to gift tax and does not qualify as a direct skip.

Section 2642(b)(1)(A) provides, in part, 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 or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)).

Section 2652(a)(1) provides, in part, that except as provided in this subsection or § 2653(a), the term "transferor" means in the case of any property subject to the tax imposed by chapter 12, the donor.

Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of this chapter.

Section 26.2652-1(a)(4) provides that in the case of a transfer with respect to which the donor's spouse makes an election under § 2513 to treat the gift as made one-half by the spouse, the electing spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513. The donor is treated as the transferor of one-half of the value of the entire property.

In this case, Trust is a GST Trust for purposes of § 2632(c). Husband and Wife each timely filed a Year 1 Form 709, signifying their consent to treat the Year 1 gifts to Trust as having been made one-half by each spouse under § 2513. As discussed above, Husband and Wife are bound by their consent. In Year 2, Husband and Wife filed amended Forms 709 to correctly report the transfer to Trust on Part 3 (Indirect Skips) of Schedule A and, on Schedule D, Part 2, Line 5, reported that his or her GST exemption was automatically allocated to the Date 1 transfer to Trust.

Accordingly, under § 2652(a)(2), Husband and Wife will be treated as the transferor of one-half of the value of the entire property transferred to Trust in Year 1. Further, we rule that the automatic allocation rules under § 2632(c) apply to allocate Husband and Wife's GST exemption to one-half of the Date 1 transfer of property to Trust.

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.

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.

These rulings are 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.

Sincerely,

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

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes